

1 MARK J. BOURASSA, ESQ.  
2 Nevada Bar No. 7999  
3 **THE BOURASSA LAW GROUP**  
4 2350 W Charleston, Suite 100  
5 Las Vegas, Nevada 89102  
6 Tel: (702) 851-2180  
7 Fax: (702) 851-2189  
8 Email: [mbourassa@blgwins.com](mailto:mbourassa@blgwins.com)  
9 *Attorneys for Plaintiff*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 MELINDA JAMES, an individual,

10 Plaintiff,

11 vs.

12 DAVID ANTHONY ALESSI, an individual

13 Defendant.  
14

Case No.: 2:18-cv-01398-JAD-CWF

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

15  
16 Plaintiff Melinda James, formerly Melinda Ellis ("Plaintiff"), by and through her attorneys  
17 of record, Mark J. Bourassa, Esq. of The Bourassa Law Group, hereby moves this Court for  
18 summary judgment as to all of Plaintiff's claims and Defendant's affirmative defenses.

19 This Motion is based on the attached Memorandum of Points and Authorities, all pleadings  
20 and papers on file in this action, and upon such further oral or documentary evidence as may be  
21 presented at the time of the hearing in this matter.

22 DATED this 21<sup>st</sup> day of January, 2020.

23 **THE BOURASSA LAW GROUP**

24 /s/ Mark J. Bourassa

25 MARK J BOURASSA, ESQ.

26 Nevada State Bar No. 7999

2350 W. Charleston Blvd., #100

Las Vegas, Nevada 89102

27 *Attorneys for Plaintiff*  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This case arises from a previous judgment Plaintiff obtained against Alessi and Koenig, LLC (hereinafter “A&K”).<sup>1</sup> In order to avoid Plaintiff’s judgment enforcement proceedings, Plaintiff and Defendant David Alessi (“Defendant”) agreed that Defendant would provide a security interest in the form of a deed of trust in certain parcels of real property identified as 9512 West Flamingo Road, Suite 100 (APN 163-18-819-016), Suite 101 (APN 163-18-819-07), and Suites 102-103 (APN 163-18-819-035) (hereinafter the “Subject Property”) as well as monthly payments to avoid judgment enforcement against A&K.<sup>2</sup> It is undisputed that the security interest was not provided as agreed.<sup>3</sup>

On June 4, 2019, Plaintiff filed her First Amended Complaint containing claims for breach of the Agreement, breach of good faith and fair dealing, and fraudulent misrepresentations/fraud in the inducement.<sup>4</sup> On June 17, 2019 Defendant filed an Answer containing nine affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

The complaint fails to state a claim upon which relief can be granted against the answering defendant.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate her damages.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff’s claims alleged in the Complaint are barred by statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

To the extent Defendant’s actions violated the law, such actions were the result of a bona fide error notwithstanding reasonable procedures designed to avoid such errors.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff’s claims may be precluded, in whole or part, to the extent Plaintiff’s purported damages, if any, were caused by Plaintiff’s acts and/or omissions.

<sup>1</sup> See Case No. 3:09-cv-00428-LRH-WCG (“Prior Action”) ECF No. 218.

<sup>2</sup> See Agreement, attached hereto as Exhibit “1.”

<sup>3</sup> See David Anthony Alessi’s Responses to Plaintiff’s First Set of Requests for Admissions, Response to Request No. 11, attached hereto as Exhibit “2.”

<sup>4</sup> See ECF No. 25.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be precluded, in whole or part, to the extent Plaintiff's purported damages, if any, were caused by third parties whom the Defendant has no control or authority.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff lacks Article III standing to pursue the allegations in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's and/or claims are barred by release, contract provision, waiver, unclean hands, laches, estoppel and/or res judicata.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's contract claims fails for lack of consideration and failure of consideration.<sup>5</sup>

However, as will be more fully explained below, there is no genuine issue of material fact for trial with respect to Defendant's breach of the Agreement and Defendant's fraudulent misrepresentations. Moreover, Defendant cannot meet its burden of proof as to any of the affirmative defenses alleged. In considering the below, it should not be lost on the court that Defendant is a licensed and active attorney with the state of California. Pleading ignorance or stupidity is no defense. Accordingly, this Court should grant Plaintiff's Motion for Summary Judgment as to all of Plaintiff's claims, as well as to the elimination of Defendant's affirmative defenses.

**II. STATEMENT OF UNDISPUTED FACTS**

<b>UNDISPUTED FACTS</b>	<b>PLAINTIFF'S SUPPORT</b>
<b>Prior Action</b>	
1. In 2009, Plaintiff filed suit against Alessi & Koenig, LLC ("A&K"), Alessi Trustee Corporation, and Defendant for improper collection of HOA dues.	1. <u>See</u> Case No. 3:09-cv-00428-LRH-WCG ("Prior Action") at ECF No. 1.
2. On July 14, 2015, an amended judgment was filed in Plaintiff's favor, against A&K in the amount of \$381,091.04 plus post-judgment interest.	2. <u>See</u> Prior Action at ECF No. 218.

---

<sup>5</sup> See ECF No. 26.

UNDISPUTED FACTS	PLAINTIFF'S SUPPORT
3. Defendant is the managing member of the law firm A&K.	3. <u>See</u> David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 4, attached hereto as Exhibit "2."
<b>The Agreement</b>	
4. In an effort to avoid Plaintiff's judgment enforcement proceedings against A&K pending appeal, Defendant personally proposed to pledge property to be used as a security for the judgment against A&K.	4. <u>See</u> Affidavit of David Alessi, attached hereto as Exhibit "3."
5. On or about November 24, 2015, Plaintiff A&K, and Defendant entered into an agreement regarding a stay of judgment enforcement proceedings pending an appeal, which was reduced to a stipulation and entered as an Order with the Court.	5. <u>See</u> Agreement, attached hereto as Exhibit "1" and Order, attached hereto as Exhibit "4;" <u>see also</u> Affidavit of David Alessi, attached hereto as Exhibit "3."
6. Defendant David Alessi is expressly named as a party to the Agreement, and the Agreement was signed by counsel of all parties, which includes Defendant's own law firm A&K.	6. <u>Id.</u>
7. The express terms of the Agreement were as follows: Plaintiff would cease judgment enforcement proceedings against A&K while A&K appealed the judgment in exchange for: (1) First priority security interest in the form of a deed of trust in certain parcels of real property identified as 9512 West Flamingo Road, Suite 100 (APN 163-18-819-016), Suite 101 (APN 163-18-819-07), and Suites 102-103 (APN 163-18-819-035) (the "Subject Property"); (2) A promissory note executed by A&K in favor of Plaintiff in the amount of \$383,990.07 plus interest; and (3) Monthly payments by A&K to Plaintiff in the amount of \$3,750.00.	7. <u>Id.</u>
8. At the time of the Agreement, the Subject Property referenced in the Agreement, was owned by a separate entity of Defendant's, Profondo, LLC.	8. <u>See</u> David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 6, attached hereto as Exhibit "2."



UNDISPUTED FACTS	PLAINTIFF'S SUPPORT
9. Under the Agreement, two payments were made to Plaintiff which came from Lawyers Group, LLP.	9. <u>See</u> Payments, attached hereto as Exhibit "5."
10. Lawyers Group, LLP is third company Defendant is a member of, separate from A&K, that he used in an attempt to comply with the Agreement.	10. <u>See</u> David Alessi's Responses to Plaintiff's First Set of Interrogatories, Response No. 6, attached hereto as Exhibit "6."
<b>Profondo, LLC</b>	
11. At the time of the Agreement, Defendant was a member of Profondo, LLC with a 98% interest in the company.	11. <u>See</u> David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 4, attached hereto as Exhibit "2;" <u>see also</u> Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7."
12. The other 2% interest belonged to Defendant's twin sister, Debbie Pike.	12. <u>See</u> Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7;" <u>see also</u> David Alessi's Responses to Plaintiff's First Set of Interrogatories, Response No. 3, attached hereto as Exhibit "6."
13. In 2015 and at the time of the Agreement, Defendant was listed as an owner of Profondo, LLC on the Secretary of State annual list filing.	13. <u>See</u> Profondo LLC's Annual List Filing for 2015, attached hereto as Exhibit "8."
14. Defendant, as a member of Profondo, LLC with a 98% interest, had control of and the ability to pledge the Subject Property on behalf of A&K.	14. <u>See</u> David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 4, attached hereto as Exhibit "2;" <u>see also</u> Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7"
15. As the only party with the ability to pledge the Subject Property, Defendant agreed to pledge the Subject Property in exchange for Plaintiff to cease judgement enforcement against his company A&K during A&K's appeal of Plaintiff's judgment.	15. <u>See</u> Agreement, attached hereto as Exhibit "1;" <u>see also</u> Affidavit of David Alessi, attached hereto as Exhibit "3."

UNDISPUTED FACTS	PLAINTIFF'S SUPPORT
<b>Defendant's Breach of the Agreement</b>	
16. Plaintiff fully performed under the Agreement by ceasing collection efforts during the pendency of the appeal.	16. Undisputed.
17. Despite Plaintiff's performance, Defendant failed and refused to grant a first priority security interest in the Subject Property.	17. <u>See</u> David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 11, attached hereto as Exhibit "2."
18. It was not until after the Agreement was reached and signed that Defendant claimed he did not have the ability to pledge the Property.	18. <u>See</u> Affidavit of David Alessi Esq., attached hereto as Exhibit "3;" <u>see also</u> Declaration of Steve Loizzi, ECF No. 33 at 44.
19. On April 20, 2016, A&K's appeal was dismissed.	19. <u>See</u> Order, Prior Action ECF No. 240.
20. A&K subsequently filed bankruptcy in December of 2016.	20. <u>See</u> Bankruptcy Petition, attached hereto as Exhibit "9."
21. Profondo, LLC subsequently sold the Subject Property.	21. <u>See</u> Grant, Bargain, Sale Deed, attached hereto as Exhibit "10."
22. On September 10, 2018, the prior court issued an order vacating the stay of judgment enforcement proceedings.	22. <u>See</u> Order dated September 2018 Prior Action ECF No. 256, attached hereto as Exhibit "13."
23. In its order, the judge found that Defendant "negotiated the stay negligently, at a minimum, if not fraudulently."	23. <u>Id.</u> at 3:21-23.
24. The court further found that "Alessi and defendants negotiated and drafted the stay for the sole purpose of frustrating Ellis's ability to collect on the judgment."	24. <u>Id.</u> at 4-13-14.

### III. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure, Rule 56 states: "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."<sup>6</sup> A fact is "material" if it

<sup>6</sup> Fed. R. Civ. P.56(a), (c).

might affect the outcome of a suit, as determined by the governing substantive law.<sup>7</sup> An issue is “genuine” if sufficient evidence exists such that a reasonable fact finder could find for the non-moving party.<sup>8</sup> Initially, the moving party bears the burden of proving there is no genuine issue of material fact.<sup>9</sup> After the moving party meets its burden, the burden shifts to the non-moving party to produce evidence that a genuine issue of material fact remains for trial.<sup>10</sup>

#### IV. LEGAL ARGUMENT

##### A. There Are No Genuine Issues of Material Fact with Respect to Plaintiff’s Breach of Contract Claims

Under Nevada law the elements of breach of contract are: (1) a valid contract exists between plaintiff and defendant, (2) defendant failed to perform as required under the contract and was not excused from performance, and (3) Plaintiff was damaged as a result.<sup>11</sup> Contracts will be construed from their written language and enforced as written.<sup>12</sup>

##### 1. There is a Valid Contract Between Plaintiff and Defendant

In order for there to be a valid contract, there needs to be “an offer, acceptance, meeting of the minds, and consideration.”<sup>13</sup> Consideration may consist of a return promise or forbearance of an act which the party has a legal right to do.<sup>14</sup>

Here, a valid contract exists between Plaintiff and Defendant. The express terms of the Agreement state that “Plaintiff Melinda Ellis and Defendants Alessi Trustee Corporation, **David Alessi**, and Alessi and Koenig, LLC, by and through their respective counsel, hereby stipulate and agree as follows.”<sup>15</sup> This express written language shows that Defendant was a named party to the Agreement. Furthermore, Defendant is an attorney and was the managing attorney at the firm that

<sup>7</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

<sup>8</sup> *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9<sup>th</sup> Cir. 2002).

<sup>9</sup> *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9<sup>th</sup> Cir. 2002).

<sup>10</sup> *Id.*

<sup>11</sup> *See Cohen-Breen v. Gray Tel. Grp., Inc.*, 661 F.Supp.2d 1158, 1171 (D.Nev. 2009).

<sup>12</sup> *Kaldi v. Farmers*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2011).

<sup>13</sup> *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

<sup>14</sup> *See Mazzuca v. Fund Ins. Companies*, 90 Nev. 409, 411-12, 528 P.2d 705, 706 (1974) (holding that forbearance from cancelling insurance policy when insurer had legal right to do so was sufficient consideration for modification).

<sup>15</sup> *See Agreement*, attached hereto as Exhibit “1.”

1 co-drafted and approved the Agreement.<sup>16</sup> The Agreement was signed by Steve Loizzi of Alessi &  
2 Koenig as counsel of all defendants, which includes Defendant as stated in the first paragraph of  
3 the Agreement.<sup>17</sup>

4 The express written language of the Agreement further lays out the agreed upon  
5 terms between the parties (offer, acceptance, and consideration). Per the Agreement, Plaintiff would  
6 cease judgment enforcement proceedings against A&K while A&K appealed the judgment in  
7 exchange for:

- 8 (1) A first priority security interest in the form of a deed of trust in certain parcels of  
9 real property identified as 9512 West Flamingo Road, Suite 100 (APN 163-18-819-  
10 016), Suite 101 (APN 163-18-819-07), and Suites 102-103 (APN 163-18-819-035);
- 11 (2) A promissory note executed by A&K in favor of Plaintiff in the amount of  
12 \$383,990.07 plus interest; and
- 13 (3) Monthly payments by A&K to Plaintiff in the amount of \$3,750.00.<sup>18</sup>

14 This Agreement and the terms of the Agreement are further supported by an Affidavit filed  
15 by Defendant on March 18, 2016, whereby he swears under oath that he personally proposed and  
16 reached an agreement to pledge parcels of property owned by another one of his companies,  
17 Profondo LLC, as a security against the judgment obtained against A&K.<sup>19</sup> Only Defendant had an  
18 interest in/ownership of the Subject Property through Profondo, LLC, and therefore only Defendant  
19 could perform under this portion of the Agreement, making himself personally liable.<sup>20</sup> A&K had  
20 no ownership interest in nor any control over the Subject Property.

21 Additionally, two payments were made under the Agreement to Plaintiff, which came from  
22 Lawyers Group, LLP.<sup>21</sup> Lawyers Group, LLP is third company Defendant is a member of, separate  
23  
24

---

25 <sup>16</sup> See David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions,  
26 Response to Request No. 4, attached hereto as Exhibit "2."

27 <sup>17</sup> *Id.*

28 <sup>18</sup> *Id.*

<sup>19</sup> See Affidavit of David Alessi, attached hereto as Exhibit "3."

<sup>20</sup> *Id.*

<sup>21</sup> See Payments, attached hereto as Exhibit "5."

1 from A&K, that he used in an attempt to comply with the Agreement.<sup>22</sup> Therefore, there can be no  
2 dispute that Defendant consented to being personally included in the Agreement.

3 **2. Defendant Failed to Perform Under the Contract and was Not Excused from**  
4 **Performance**

5 It is undisputed that Defendant failed to perform under the Agreement, by not providing a  
6 security interest to Plaintiff.<sup>23</sup>

7 Additionally, Defendant was not excused from performance. Defendant will attempt to  
8 argue that he was excused from performing under the Agreement because he did not have the ability  
9 to bind the company. However, the evidence in this case contradicts this defense. It is undisputed  
10 that Profondo, LLC owned the Subject Property<sup>24</sup> and Defendant had a 98% membership interest  
11 in Profondo, LLC.<sup>25</sup> Defendant has not produced any documents that restrict his 98% interest from  
12 binding the company.<sup>26</sup> Moreover, any claim that his twin sister, Debi Pike managing member of  
13 Profondo, LLC (2% interest), refused to allow Defendant from performing under the Agreement is  
14 wholly unsupported by any evidence. In fact, at her deposition Ms. Pike was unaware of any assets,  
15 documents, or financials of Profondo, LLC.<sup>27</sup>

16 The language of the Nevada Supreme Court in a case involving the effect of a stipulated  
17 ruling is particularly instructive as to whether Defendant can be excused from performing under  
18 the Agreement:

19  
20 <sup>22</sup> See David Alessi's Responses to Plaintiff's First Set of Interrogatories, Response No. 6,  
21 attached hereto as Exhibit "6."

22 <sup>23</sup> See David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions,  
23 Response No. 11, attached hereto as Exhibit "2."

24 <sup>24</sup> See David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions,  
25 Response to Request No. 6, attached hereto as Exhibit "2."

26 <sup>25</sup> See Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7;" *see also*  
27 David Alessi's Responses to Plaintiff's First Set of Interrogatories, Response No. 3, attached  
28 hereto as Exhibit "6."

<sup>26</sup> There is an amended operating agreement that grants the managing member authority, but  
nothing that restricts any other member, particularly a 98% owner. *See* Amended Operating  
Agreement, attached hereto as Exhibit "7."

<sup>27</sup> The deposition of Debi Pike took place on January 15, 2020; therefore, the official transcript  
has not been completed. Plaintiff has attached the rough draft of the Deposition of Debi Pike  
hereto as Exhibit "11."

The ordinary rule is that a party cannot avail himself of an error to which he has consented, or which has been induced by his own acts when free from misapprehension or mistake. A party who expressly asks that a designated ruling be made cannot avail himself of that ruling on appeal, although it may be material and may be exhibited by the record. What a party expressly asks cannot be made available as error without a violation of the plainest principles of justice. *Crosby v. North Bonanza Silver Mining Co.*, 23 Nev. 70, 75, 42 P. 583, 584-585 (1895). (internal quotations omitted).

Although *Crosby* involves an appeal, the justification and reasoning behind the ruling still applies here. Defendant is an attorney, and specifically is an attorney at the firm that co-drafted and approved the Agreement.<sup>28</sup> Defendant personally entered into the stipulated Agreement and cannot escape liability now that he is being held personally accountable for his misrepresentations and failure to perform under the same.

### **3. Plaintiff was Damaged as a Result of Defendant's Failure to Perform Under the Contract**

It is also undisputed that Plaintiff was damaged as a result of Defendant's failure to perform under the Agreement. Prior to the Agreement, Plaintiff engaged in judgment enforcement proceedings against Defendant's company A&K for her \$383,990.07 judgment. In an effort to avoid these proceedings, Defendant proposed to offer a security interest in the Subject Property and monthly payments pending A&K's appeal. Instead of providing a security interest, Defendant sold the Subject Property<sup>29</sup> and filed bankruptcy on behalf of A&K,<sup>30</sup> thereby extinguishing any possibility of Plaintiff collecting her judgment. Therefore, Plaintiff was damaged in the amount of \$383,990.07 plus post judgment interest.

Therefore, there are no genuine issues of material fact as to Plaintiff's breach of contract claims and summary judgment should be granted in Plaintiff's favor in the amount of \$383,990.07 plus post judgment interest.

///

<sup>28</sup> See Agreement, attached hereto as Exhibit "1;" see also David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 4, attached hereto as Exhibit "2."

<sup>29</sup> See Grant, Bargain, Sale Deed, attached hereto as Exhibit "10."

<sup>30</sup> See Bankruptcy Petition, attached hereto as Exhibit "9."

**B. There Are No Genuine Issues of Material Fact with Respect to Plaintiff's Breach of Good Faith and Fair Dealing Claims**

To establish a breach of good faith and fair dealing Plaintiff must prove the following:

1. Plaintiff and Defendant were parties to a contract;
2. Defendant owed a duty of good faith to Plaintiff;
3. Defendants breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and
4. Plaintiff's justified expectations were thus denied.<sup>31</sup>

An implied covenant of good faith and fair dealing exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that creates a disadvantage to the other party.<sup>32</sup> Where a defendant deliberately contravenes the intention and spirit of the contract, the defendant can incur liability for the breach of implied covenant of good faith and fair dealing.<sup>33</sup>

Here, the purpose of the Agreement was to stay Plaintiff's judgment enforcement proceedings against Defendant's company A&K pending A&K's appeal.<sup>34</sup> In order to fulfill this purpose, the parties agreed that Plaintiff would cease collection proceedings if Defendant provided a security interest in the Subject Property and made monthly payments.<sup>35</sup> This Agreement was reduced to writing, signed by the parties' attorneys, and entered as an order by the Court.<sup>36</sup> However, despite Defendant's 98% interest in Profondo, LLC (owner of the Subject Property), Defendant failed to provide a security interest in the Subject Property per the Agreement and his original proposal.<sup>37</sup> Subsequently, Defendant sold the Subject Property and filed bankruptcy on behalf of A&K, foreclosing on any possibility of Plaintiff collecting on her judgment.<sup>38</sup> Therefore,

<sup>31</sup> *Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995); *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 808 P.2d 919 (1991).

<sup>32</sup> *Frantz v. Johnson*, 116 Nev. 455, 999 P.2d 351 (2000); *see also Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251 (1998).

<sup>33</sup> *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 866 P.2d 454 (1994).

<sup>34</sup> *See* Agreement, attached hereto as Exhibit "1."

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; *see also* Order, attached hereto as Exhibit "4."

<sup>37</sup> *See* David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response to Request No. 11, attached hereto as Exhibit "2."

<sup>38</sup> *See* Bankruptcy Petition, attached hereto as Exhibit "9."



1 Defendant breached the implied duty of good faith and fair dealing.

2 Therefore, there are no genuine issues of material fact as to Plaintiff's breached the implied  
3 duty of good faith and fair dealing claims and summary judgment should be granted in Plaintiff's  
4 favor.

5 **C. There Are No Genuine Issues of Material Fact with Respect to Plaintiff's**  
6 **Fraudulent Misrepresentation and Fraud in the Inducement Claims**

7 To prevail on a claim for fraudulent misrepresentation, Plaintiff must prove: (1) Defendant  
8 made a false representation; (2) Defendant knew or believed his representation was false, or had  
9 insufficient basis of information for making the representation; (3) Defendant intended to induce  
10 Plaintiff to act or refrain from acting upon misrepresentation; (4) Plaintiff justifiably relied upon  
11 Defendant's misrepresentation; and (5) Plaintiff sustained damage.<sup>39</sup> Plaintiff has burden of proving  
12 each and every element by clear and convincing evidence.<sup>40</sup> Furthermore, it is well settled under  
13 Nevada law, "an individual who commits a tort while acting in the capacity of a corporate officer  
14 may be held personally liable."<sup>41</sup>

15 **1. Defendant Made False Representations**

16 The suppression or omission of a material fact which a party is bound in good faith to  
17 disclose is equivalent to a false representation, since it constitutes an indirect representation that  
18 such fact does not exist.<sup>42</sup>

19 By entering into the written Agreement, Defendant represented and assured Plaintiff he (1)  
20 had control of the Subject Property; (2) had the ability to perform under the Agreement; and (3)  
21 would perform under the Agreement.<sup>43</sup> By his own admission under oath, Defendant admits that he  
22 proposed that the Subject Property be used as a security interest to Plaintiff, and that he reached an  
23

24 <sup>39</sup> *Barmettler v. Reno Air, Inc.*, 114 Nev. 110, 956 P.2d 1382 (1998); *Blanchard v. Blanchard*,  
25 108 Nev. 908, 839 P.2d 1320 (1992).

26 <sup>40</sup> *Id.*

27 <sup>41</sup> *Pocahontas First Corp. v. Venture Planning Grp., Inc.*, 572 F. Supp. 503, 508 (D. Nev. 1983);  
28 *see also* NRS §78.138(7); *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 901 P.2d 684,  
689 (Nev. 1995).

<sup>42</sup> *Nelson v. Heer*, 123 Nev. 26, 163 P.3d 420 (2007).

<sup>43</sup> *See* Agreement, attached hereto as Exhibit "1."



1 Agreement with Plaintiff to pledge the Subject Property as a security interest.<sup>44</sup> At no time during  
 2 negotiations did Defendant claim that he had to get permission from his twin sister (2% member of  
 3 Profondo, LLC) to pledge the Subject Property. It was not until the Agreement was executed and  
 4 Plaintiff performed under the Agreement that Defendant claimed he did not have the ability to  
 5 pledge the Subject Property.<sup>45</sup> Defendant admits in his sworn statement that he did not even speak  
 6 with his sister about this Agreement until February 2016 after the Agreement was already signed  
 7 and the security instrument was being drafted.<sup>46</sup> There is also no evidence presented to date that  
 8 Ms. Pike refused to allow the Subject Property be used as a security interest. Therefore, Defendant  
 9 made a false representation when he stated he would pledge the Subject Property as security  
 10 interest, as he never had any intention to do so despite having 98% control over the Subject Property  
 11 and entering into a written Agreement confirming his ability to do so.

12 **2. Defendant Knew His Representation was False and/or had Insufficient**  
 13 **Basis of Information for Making the Representation**

14 Defendant had full control of the Subject Property at the time of the Agreement, as he was  
 15 a 98% member of Profondo, LLC with his twin sister holding the other 2%.<sup>47</sup> Defendant did not  
 16 produce any documents that restrict his ability to bind Profondo, LLC or its assets. Therefore,  
 17 Defendant had the ability to pledge the Subject Property. However, Defendant entered into the  
 18 Agreement knowing that despite his representation to Plaintiff that he would pledge the Subject  
 19 Property as a security interest, he had no intention to do so. On the other hand, if Defendant needed  
 20 approval from a 2% member of Profondo, LLC, which there is no evidence of, he was without  
 21 sufficient basis of information to make the representation without consulting with the managing  
 22 member of Profondo, LLC, which he admitted he did not do until after the Agreement was  
 23 executed.<sup>48</sup>

24 ///

25 <sup>44</sup> See also Affidavit of David Alessi, attached hereto as Exhibit “3.”

26 <sup>45</sup> See also Affidavit of David Alessi, attached hereto as Exhibit “3.”

27 <sup>46</sup> *Id.*

28 <sup>47</sup> See Amended Operating Agreement Profondo LLC, attached hereto as Exhibit “7;” see also David Alessi’s Responses to Plaintiff’s First Set of Interrogatories, Response No. 3, attached hereto as Exhibit “6.”

<sup>48</sup> *Id.*

1                                   **3. Defendant Intended to Induce Plaintiff to Refrain from Acting Upon**  
 2                                   **the Misrepresentation**

3           Defendant intended to induce Plaintiff from ceasing judgment enforcement proceedings  
 4 against A&K upon his misrepresentation that he would provide a security interest in the Property.  
 5 This is evident from Defendant's subsequent activity including selling the Subject Property<sup>49</sup> and  
 6 filing bankruptcy on behalf of A&K,<sup>50</sup> thereby extinguishing any possibility of Plaintiff collecting  
 7 her judgment. Plaintiff issued subpoenas to financial institutions and the title company regarding  
 8 the sale of the Subject Property to track where the proceeds were distributed. Defendant currently  
 9 has a pending motion for protective order regarding these subpoenas.<sup>51</sup>

10                                  **4. Plaintiff Justifiably Relied on Defendant's Representations**

11           It is undisputed that Plaintiff justifiably relied on Defendant's representations, as she  
 12 performed under the Agreement and ceased judgment enforcement proceedings against A&K.  
 13 Plaintiff was also justified in relying on Defendant's representations that he would pledge the  
 14 Subject Property as Defendant was a 98% member of Profondo, LLC<sup>52</sup> and Defendant was listed  
 15 as the owner on Profondo, LLC's Secretary of State filings for 2015.<sup>53</sup>

16                                  **5. Plaintiff Sustained Damages**

17           As stated above in Plaintiff's breach of contract arguments, it is undisputed that Plaintiff  
 18 suffered damages.

19           Therefore, there are no genuine issues of material fact as to Plaintiff's fraudulent  
 20 misrepresentation and fraud in the inducement claims and summary judgment should be granted in  
 21 Plaintiff's favor in the amount of \$383,990.07 plus post judgment interest and punitive damages.

22    ///

23    ///

24    ///

25    ///

26    <sup>49</sup> See Grant, Bargain, Sale Deed, attached hereto as Exhibit "10."

27    <sup>50</sup> See Bankruptcy Petition, attached hereto as Exhibit "9."

28    <sup>51</sup> See ECF No. 38.

<sup>52</sup> See Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7."

<sup>53</sup> See Profondo, LLC Annual List Filings for 2015, attached hereto as Exhibit "8."

**D. Defendant Cannot Maintain His Affirmative Defenses as a Matter of Law**

It is well settled that a defendant bears the burden of proving its affirmative defenses.<sup>54</sup> This burden does not suddenly attach at trial. Discovery has been completed in this case, and Defendant has had the opportunity to discover any and all evidence supporting his defenses. If Defendant cannot produce that evidence now, then it is axiomatic that it will be unable to do so at trial. In the interest of narrowing the issues to be tried and judicial efficiency, it is appropriate to test the sufficiency of those defenses now through summary judgment. As will be more fully explained below, Defendant has not provided any evidence in support of these defenses. Therefore, Defendant has not met its burden,<sup>55</sup> and summary judgment is appropriate.

**1. First Affirmative Defenses – Failure to State a Claim**

This defense was already challenged at the initiation of the lawsuit. On August 31, 2018, Defendant filed a motion to dismiss all of Plaintiff's claims for failure to state a claim.<sup>56</sup> On May 24, 2019, this Court entered an Order denying the motion as to Plaintiff's breach of contract claims and granting the motion as to Plaintiff's fraud claims with leave to amend such claims for further factual support.<sup>57</sup> Plaintiff amended her fraud claims on June 4, 2019 with further factual support for her fraud claims.<sup>58</sup> Thus, summary judgment is appropriate as to this defense.

**2. Second Affirmative Defense – Plaintiff Failed to Mitigate Damages**

Defendant's second affirmative defense, plaintiff failed to mitigate her damages, likewise fails as a matter of law. Defendant has produced no evidence that Plaintiff had an opportunity to mitigate her damages but failed to do so. Although Defendant testified that he offered to give his company's business to Plaintiff's counsel, who in turn would have had to defend numerous HOA

<sup>54</sup> *Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 94, 338 P.3d 1250, 1254 (2014), reh'g denied (Mar. 23, 2015) (citing *Schwartz v. Schwartz*, 95 Nev. 202, 206 n. 2, 591 P.2d 1137, 1140 n. 2 (1979) (stating that a defendant bears the burden of proving each element of an affirmative defense)).

<sup>55</sup> "[T]he nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

<sup>56</sup> See ECF No. 5.

<sup>57</sup> See ECF No. 24.

<sup>58</sup> See ECF No. 25.

lawsuits involving over 500 depositions, however this was not an offer that would have brought any monetary gain to Plaintiff.<sup>59</sup> Thus, summary judgment is appropriate as to this defense.

### 3. Third Affirmative Defense – Statute of Limitations

Defendant's third affirmative defense, statute of limitations, fails as a matter of law. The parties entered into a written Agreement on November 24, 2015, which was entered as an Order on December 16, 2015. Plaintiff filed her complaint for breach of contract and fraud claims on July 7, 2018. The statute of limitations in Nevada on contract claims is six years,<sup>60</sup> while the statute of limitations on a fraud claims is three years.<sup>61</sup> Plaintiff filed her complaint less than three years after the Agreement was entered into, therefore Plaintiff's claims are well within the statute of limitations. Furthermore, Defendant also testified that he had no factual basis for the third affirmative defense and cannot meet its burden of proof.<sup>62</sup> Thus, summary judgment is appropriate with respect to this defense.

### 4. Fourth Affirmative Defense – Bona Fide Error

A bona fide error is defined as "a violation that is unintentional and occurs despite procedures reasonably adapted to avoid any such error."<sup>63</sup> Defendant admitted under sworn declaration that he was the managing member of A&K and a member Profondo when he personally proposed and reached an agreement to pledge the Subject Property in exchange for Plaintiff to ceased collection enforcement proceedings of her judgment.<sup>64</sup> Profondo's managing member and only other member was Defendant's twin sister Debi Pike, who had only a 2% interest in Profondo compared to Defendant's 98% interest.<sup>65</sup> In fact, Debi Pike testified that she did not even know what assets Profondo possessed.<sup>66</sup> There is no evidentiary support that it was a bona fide error that Defendant could not provide security interest in the Subject Property. Defendant also testified that

<sup>59</sup> See Deposition of David Alessi at 73:2-22, attached to hereto as Exhibit "12."

<sup>60</sup> NRS 11.190(1)

<sup>61</sup> NRS 11.190(3).

<sup>62</sup> See Deposition of David Alessi at 76:9-22, attached to hereto as Exhibit "12"

<sup>63</sup> See ERROR, Black's Law Dictionary (11th ed. 2019).

<sup>64</sup> See Affidavit of David Alessi, attached hereto as Exhibit "3."

<sup>65</sup> See Amended Operating Agreement Profondo LLC, attached hereto as Exhibit "7."

<sup>66</sup> The deposition of Debi Pike took place on January 15, 2020; therefore, the official transcript has not been completed. Plaintiff has attached the rough draft of the Deposition of Debi Pike hereto as Exhibit "11."

1 he did not know of any reasonable procedures in place to prevent such an error.<sup>67</sup> Therefore,  
 2 Defendant has not met his burden of proof and summary judgment is appropriate with respect to  
 3 this defense.

#### 4 **5. Fifth Affirmative Defense – Plaintiff’s Own Acts and/or Omissions**

5 Defendant’s fifth affirmative defense, Plaintiff’s damages were caused by Plaintiff’s own  
 6 acts or omissions, has no factual support and fails as a matter of law. During Defendant’s  
 7 deposition, he could not point to any specific fact to support this defense and therefore cannot meet  
 8 his burden of proof.<sup>68</sup>

#### 9 **6. Sixth Affirmative Defense – Causation of Third Parties**

10 Defendant’s sixth affirmative defense, causation by third parties over whom Defendant has  
 11 no control, likewise fails a matter of law. Essentially, Defendant contends that he is not responsible  
 12 for the acts of non-parties. NRS §41.141(b)(2) allows a jury to return a verdict “indicating the  
 13 percentage of negligence attributable to each party remaining in the action.” NRS §41.151(b)(2)  
 14 therefore “prevents admission of evidence in support of a ‘comparative fault’ or apportionment  
 15 analysis of the case as to *nonparties*, and a jury may only ‘compare’ the negligence as between  
 16 parties and nonparties.”<sup>69</sup> Defendant has had adequate opportunities to bring claims against any  
 17 potentially responsible party in this litigation. If a person or entity other than the parties involved  
 18 herein was or could be responsible for Plaintiff’s damages, Defendant should have brought  
 19 appropriate claims against said parties. To the extent that it did not, Defendant may not now be  
 20 allowed to point to an “empty chair” in their defense of this litigation as a way to apportion its  
 21 liability. Furthermore, Defendant also testified that he had no factual basis for the sixth affirmative  
 22 defense and cannot meet its burden of proof.<sup>70</sup> Thus, summary judgment is appropriate with respect  
 23 to this defense.

#### 24 **7. Seventh Affirmative Defense – Article III Standing**

25 Defendant’s seventh affirmative defense, Article III standing, is not supported by

26 <sup>67</sup> See Deposition of David Alessi at 74:16-12, attached to hereto as Exhibit “12.”

27 <sup>68</sup> See Deposition of David Alessi at 75:13-76:16, attached to hereto as Exhibit “12.”

28 <sup>69</sup> *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 844, 102 P.3d 52, 67 (2004), *see also Phillips v. C.R. Bard, Inc.*, No. 3:12-CV-00344-RCJ, 2015 WL 260873, at \*4 (D. Nev. Jan. 21, 2015).

<sup>70</sup> See Deposition of David Alessi at 76:9-22, attached to hereto as Exhibit “12.”

Defendant's own admissions in this matter and therefore fails a matter of law. For a dispute to be within the power (the subject-matter jurisdiction) of a federal court, the plaintiff must have standing—that is, the plaintiff must have alleged a sufficient interest in the dispute. This “irreducible constitutional minimum” of standing has three elements: (1) the plaintiff has suffered a concrete injury; (2) that injury is fairly traceable to actions of the defendant; and (3) it must be likely—not merely speculative—that the injury will be redressed by a favorable decision.<sup>71</sup>

Here, Plaintiff has alleged a sufficient interest against Defendant and has produced evidence to support the same. Plaintiff entered into a written Agreement with Defendant and the written Agreement specifically identifies Defendant by name.<sup>72</sup> By Defendant's own admission, Defendant breached that agreement by not providing a security interest to Plaintiff<sup>73</sup> causing monetary injury to Plaintiff in the amount of \$383,990.07. A favorable decision by the jury will redress Plaintiff's injury by monetarily putting her in a position that she was in before entering into the Agreement with Defendant. Furthermore, Defendant also testified that he had no factual basis for the sixth affirmative defense and cannot meet its burden of proof.<sup>74</sup> Therefore, summary judgment is appropriate with respect to this defense.

#### **8. Eighth Affirmative Defense – Release, Contract Provision, Waiver, Unclean Hands, Laches, Estoppel and/or Res Judicata**

With respect to his eighth affirmative defense for release, contract provision, unclean hands, laches, estoppel, and/or res judicata, Defendant testified that he has no factors or evidence to support this defense.<sup>75</sup> Defendant has also not produced any other evidence in support of this defense. Thus, summary judgment is appropriate as to this defense.

#### **9. Ninth Affirmative Defense – Lack of Consideration**

Defendant's ninth affirmative defense, lack of consideration, likewise fails a matter of law. The evidence presented in this case demonstrates consideration. Consideration may consist of a

<sup>71</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

<sup>72</sup> See Agreement, attached hereto as Exhibit “1;” see also Affidavit of David Alessi at ¶6-7, attached hereto as Exhibit “3.”

<sup>73</sup> See David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions, Response No. 11, attached hereto as Exhibit “2.”

<sup>74</sup> See Deposition of David Alessi at 76:23-77:5, attached to hereto as Exhibit “12.”

<sup>75</sup> See Deposition of David Alessi at 77:6-17, attached to hereto as Exhibit “12.”

1 return promise or forbearance of an act which the party has a legal right to do.<sup>76</sup> The terms of the  
 2 Agreement were that Defendant would pledge the Subject Property as a security interest for the  
 3 judgment obtained against A&K and make monthly payments of \$3,750.00 to Plaintiff in exchange  
 4 for Plaintiff ceasing judgment enforcement proceedings against A&K.<sup>77</sup> Defendant is the managing  
 5 member of A&K, and also a member of Profondo LLC, which was the owner of the Property  
 6 offered by Defendant (provided consideration) in exchange for ceasing judgment enforcement  
 7 against A&K during A&K appeal (received consideration).<sup>78</sup> It is undisputed that Plaintiff ceased  
 8 judgment enforcement proceedings against A&K during the appeal. Additionally, two payments  
 9 were made under the Agreement to Plaintiff, which came from Lawyers Group, LLP.<sup>79</sup> Lawyers  
 10 Group, LLP is third company Defendant is a member of, separate from A&K, that he used in an  
 11 attempt to comply with the Agreement.<sup>80</sup> Additionally, also testified that he had no factual basis for  
 12 the sixth affirmative defense and cannot meet its burden of proof.<sup>81</sup> Thus, summary judgment is  
 13 appropriate as to this defense.

#### 14 **V. CONCLUSION**

15 Based on the foregoing, Plaintiff respectfully requests this Court to deny Defendant's  
 16 Motion for Protective Order and permit the requested discovery.

17 DATED this 21<sup>st</sup> day of January 2020.

18 **THE BOURASSA LAW GROUP**

19 /s/ Mark J. Bourassa

20 MARK J BOURASSA, ESQ.

21 Nevada State Bar No. 7999

22 2350 W. Charleston Blvd., #100

Las Vegas, Nevada 89102

*Attorneys for Plaintiff*

23 <sup>76</sup> See *Mazzuca v. Fund Ins. Companies*, 90 Nev. 409, 411-12, 528 P.2d 705, 706 (1974) (holding  
 24 that forbearance from cancelling insurance policy when insurer had legal right to do so was  
 sufficient consideration for modification).

25 <sup>77</sup> See Agreement, attached hereto as Exhibit "1."

26 <sup>78</sup> See David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admissions,  
 Response to Request No. 3 and Response to Request No. 4, attached hereto as Exhibit "2."

27 <sup>79</sup> See Payments, attached hereto as Exhibit "5."

28 <sup>80</sup> See David Alessi's Responses to Plaintiff's First Set of Interrogatories, Response No. 6,  
 attached hereto as Exhibit "6."

<sup>81</sup> See Deposition of David Alessi at 77:18-78:2, attached to hereto as Exhibit "12."



**DECLARATION OF VALERIE S. GRAY, ESQ. IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Valerie S. Gray, Esq., being first duly sworn deposes and says:

1. I, Valerie S. Gray, Esq., have actual knowledge as to the matters stated herein, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

2. I am an attorney, duly licensed to practice before all of the Courts of the State of Nevada and am an attorney at the law firm of The Bourassa Law Group.

3. The Bourassa Law Group is counsel of record for Plaintiff MELINDA JAMES ("Plaintiff") in the above captioned matter.

4. This Declaration is being served in compliance with FRCP 56 and pertains to Plaintiff's Motion for Summary Judgment.

5. A true and correct copy the Agreement is attached hereto as Exhibit "1."

6. I have no reason to believe that the document attached as Exhibit "1" is anything but a true and correct copy of the Agreement.

7. A true and correct copy of David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admission is attached hereto as Exhibit "2."

8. I have no reason to believe that the document attached as Exhibit "2" is anything but a true and correct copy of David Anthony Alessi's Responses to Plaintiff's First Set of Requests for Admission.

9. A true and correct copy the Affidavit of David Alessi is attached hereto as Exhibit "3."

10. I have no reason to believe that the document attached as Exhibit "3" is anything but a true and correct copy of the Affidavit of David Alessi.

11. A true and correct copy the Order is attached hereto as Exhibit "4."

12. I have no reason to believe that the document attached as Exhibit "4" is anything but a true and correct copy of the Order.

13. A true and correct copy of the Payments is attached hereto as Exhibit "5."



1           14.     I have no reason to believe that the document attached as Exhibit “5” is anything  
2 but a true and correct copy of the Payments.

3           15.     A true and correct copy of David Anthony Alessi’s Responses to Plaintiff’s First  
4 Set of Requests Interrogatories is attached as Exhibit “6.”

5           16.     I have no reason to believe that the document attached as Exhibit “6” is anything  
6 but a true and correct copy of the David Anthony Alessi’s Responses to Plaintiff’s First Set of  
7 Requests Interrogatories.

8           17.     A true and correct copy of the Amended Operating Agreement of Profondo, LLC  
9 is attached hereto as Exhibit “7.”

10          18.     I have no reason to believe that the document attached as Exhibit “7” is anything  
11 but a true and correct copy of the Amended Operating Agreement of Profondo, LLC.

12          19.     A true and correct copy of Profondo, LLC’s Annual List Filing for 2015 is attached  
13 as Exhibit “8.”

14          20.     I have no reason to believe that the document attached as Exhibit “8” is anything  
15 but a true and correct copy of Profondo, LLC’s Annual List Filing for 2015.

16          21.     A true and correct copy of the Bankruptcy Petition is attached hereto as Exhibit  
17 “9.”

18          22.     I have no reason to believe that the document attached as Exhibit “9” is anything  
19 but a true and correct copy of the Bankruptcy Petition.

20          23.     A true and correct copy of the Grant, Bargain, Sale Deed is attached hereto as  
21 Exhibit “10.”

22          24.     I have no reason to believe that the document attached as Exhibit “10” is anything  
23 but a true and correct copy of the Grant, Bargain, Sale Deed.

24          25.     A true and correct copy of Debi Pike’s Deposition rough draft transcript is attached  
25 hereto as Exhibit “11.”

26          26.     I have no reason to believe that the document attached as Exhibit “11” is anything  
27 but a true and correct copy of Debi Pike’s Deposition rough draft transcript.

28

I declare under penalty of perjury that the foregoing is true and correct.

- 22 -

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was electronically filed this 21<sup>st</sup> day of January 2020, and is available for viewing and downloading from the ECF System of the United States District Court for the District of Nevada by the following parties:

Frank C. Gilmore, Esq.  
Cody Oldham, Esq.  
ROBINSON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, Nevada 89503

/s/ Valerie Gray  
An employee of The Bourassa Law Group

# **EXHIBIT “1”**

## **Agreement**

# **EXHIBIT “1”**

## **Agreement**

MARK J. BOURASSA, ESQ.  
Nevada Bar No. 7999  
TRENT L. RICHARDS, ESQ.  
Nevada Bar NO. 11448  
**THE BOURASSA LAW GROUP, LLC**  
8668 Spring Mountain Rd. Suite 101  
Las Vegas, Nevada 89117  
Telephone: (702) 851-2180  
Facsimile: (702) 851-2189  
[mbourassa@bourassalawgroup.com](mailto:mbourassa@bourassalawgroup.com)  
[trichards@bourassalawgroup.com](mailto:trichards@bourassalawgroup.com)  
*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MELINDA ELLIS,

Plaintiff,

v.

ALESSI TRUSTEE CORPORATION;  
DAVID ANTHONY ALESSI; and  
ALESSI & KOENIG, LLC.,

Defendants.

Case No.: 3:09-cv-00428-LRH-WGC

**STIPULATION REGARDING  
JUDGMENT ENFORCEMENT**

Plaintiff Melinda Ellis and Defendants Alessi Trustee Corporation, David Anthony Alessi, and Alessi & Koenig, LLC, by and through their respective counsel, hereby stipulate and agree as follows:

WHEREAS, on July 14, 2015, the Court entered an Amended Judgment in a Civil Case [Docket No. 218];

WHEREAS, Defendants filed a Notice of Appeal to United States Court of Appeals for the Ninth Circuit on February 27, 2015 [Docket No. 220];

1 WHEREAS, the appeal of the judgment entered against Defendants was assigned case  
2 number 15-16493 by the United States Court of Appeals for the Ninth Circuit;

3 WHEREAS, Defendants have not filed a supercedeas bond with the Court so as to stay  
4 enforcement of the judgment entered against them; and

5 WHEREAS, the Plaintiff and Defendants have otherwise reached an agreement to stay  
6 enforcement proceedings pursuant to the terms herein.

7 THEREFORE, the parties hereby stipulate and agree as follows:

8 1. Plaintiff will refrain from further judgment enforcement proceedings against  
9 Defendant Alessi and Koenig, LLC;

10 2. Defendant Alessi and Koenig, LLC will execute a promissory note for the benefit  
11 of Plaintiff and her attorneys;

12 3. The promissory note shall be in the amount of the judgment as entered against  
13 Defendant Alessi and Koenig, LLC in the amount of Three Hundred Eighty-Three Thousand  
14 Nine Hundred Ninety Dollars and Seven Cents (\$383,990.07), plus interest;

15 4. Plaintiff will also be granted a first priority security interest in the form of a deed  
16 of trust against certain real property identified as 9512 West Flamingo Road, Suite 100 (APN  
17 163-18-819-016), Suite 101 (APN 163-18-819-017), and Suites 102-103 (APN 163-18-819-035);

18 5. The deed of trust shall be in the amount of the judgment as entered against  
19 Defendant Alessi and Koenig, LLC in the amount of Three Hundred Eighty-Three Thousand  
20 Nine Hundred Ninety Dollars and Seven Cents (\$383,990.07), plus interest.

21 6. Interest will be calculated at the federal statutory rate as awarded in the Judgment.

22 7. Defendant Alessi and Koenig, LLC shall make monthly payment to Plaintiff  
23 towards the Promissory note in the amount of Three Thousand Seven Hundred Fifty Dollars  
24 (\$3,750.00) (the "Monthly Payment").

8. The Monthly Payment will be applied first to interest on the promissory note, then to principal.

9. The promissory note shall become due and payable in full sixty (60) days after the final order regarding the disposition of the appeal;

10. Defendant Alessi and Koenig, LLC shall be deemed in default of the promissory note if any Monthly Payment is unpaid for a period of 15 days, or if the promissory note is not paid in full within 15 days of it becoming due.

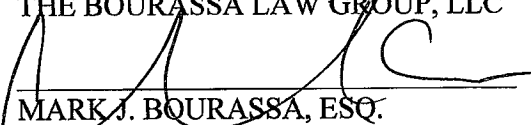
11. Plaintiff and her counsel are entitled to their attorney fees and costs incurred in any enforcement or foreclosure proceedings relating to the promissory note and/or the deed of trust.

12. In the event that Defendant Alessi and Koenig prevails on the appeal, Plaintiff and her counsel shall retain all payments made without recourse by Defendant Alessi and Koenig.

13. Upon execution of this agreement, all collection efforts against Alessi and Koenig shall immediately cease and any existing or pending writs of execution or possession shall be recalled and terminated. Any funds collected from Alessi and Koenig after the execution of this stipulation shall be promptly returned.

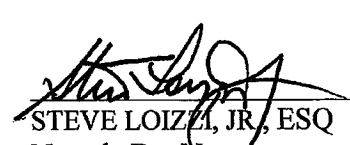
DATED this 23<sup>rd</sup> <sup>November</sup> day of October 2015

THE BOURASSA LAW GROUP, LLC

  
MARK J. BOURASSA, ESQ.  
Nevada Bar No. 7999  
TRENT L. RICHARDS, ESQ.  
Nevada Bar No. 11448  
8668 Spring Mountain Rd. Suite 101  
Las Vegas, Nevada 89117  
Telephone: (702) 851-2180  
Facsimile: (702) 851-2189  
[mbourassa@bourassalawgroup.com](mailto:mbourassa@bourassalawgroup.com)  
[trichards@bourassalawgroup.com](mailto:trichards@bourassalawgroup.com)  
*Attorneys for Plaintiff*

DATED this 16<sup>th</sup> day of October 2015

ALESSI & KOENIG, LLC

  
STEVE LOIZZI, JR., ESQ.  
Nevada Bar No.           
9500 W. Flamingo Road, Ste. 101  
Las Vegas, Nevada 89147  
Telephone: (702) 222-4033  
Facsimile: (702) 222-4043  
*Attorneys for Defendants*

# **EXHIBIT “2”**

**David Anthony Alessi’s Responses to  
Plaintiff’s First Set of Requests for  
Admission**

# **EXHIBIT “2”**

**David Anthony Alessi’s Responses to  
Plaintiff’s First Set of Requests for  
Admission**



1 FRANK C. GILMORE, ESQ. – NSB #10052  
fgilmore@rssblaw.com  
2 CODY M. OLDHAM, ESQ. – NSB #14594  
coldham@rssblaw.com  
3 Robison, Sharp, Sullivan & Brust  
71 Washington Street  
4 Reno, Nevada 89503  
Telephone: (775) 329-3151  
5 Facsimile: (775) 329-7169  
*Attorneys for Defendant David*  
6 *A. Alessi*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
10

11 MELINDA JAMES,

Case No.: 2:18-cv-01398-JAD-CWF

12 Plaintiff,

13 vs.

14 DAVID ANTHONY ALESSI, an individual

15 Defendant.  
16 \_\_\_\_\_/

**DAVID ANTHONY ALESSI'S**  
**RESPONSES TO PLAINTIFF'S**  
**FIRST SET OF REQUESTS FOR**  
**ADMISSION**

17 **COMES NOW**, Defendant, DAVID ANTHONY ALESSI (hereinafter referred to as  
18 “Respondent”), by and through his attorney of record, and hereby objects and responds to Plaintiff,  
19 MELINDA JAMES’s (“Plaintiff”) First Set of Requests for Admission as follows:

20 **PRELIMINARY STATEMENT**

21 These responses and objections are not intended to be, and should not be interpreted as, a  
22 waiver of any objection to the admissibility of any such information on the grounds of privilege,  
23 work product doctrine, hearsay, relevance or any other objection.

24 Additionally, Respondent objects to each request for admission to the extent that it calls  
25 for information protected by attorney-client privilege and/or work product doctrine. Any  
26 inadvertent disclosure of information protected by the aforementioned privileges, or any other  
27 applicable privileges and/or immunities recognized by statute or case law shall not be deemed a  
28 waiver of the privilege/immunity.

1 Finally, these responses are based solely on information presently known to Respondent.  
2 Further discovery may lead to additions to, changes in, or modifications of these responses.

3 Accordingly, these responses are being given without prejudice to Respondent's right to  
4 produce subsequent discovery evidence and to introduce the same at trial.

5 **REQUEST FOR ADMISSION NO. 1:**

6 Admit that the signature on page 4 of Exhibit "1" is your signature.

7 **RESPONSE TO REQUEST NO. 1:**

8 Admit.

9 **REQUEST FOR ADMISSION NO. 2:**

10 Admit that you signed Exhibit "1" under penalty of perjury.

11 **RESPONSE TO REQUEST NO. 2:**

12 Admit.

13 **REQUEST FOR ADMISSION NO. 3:**

14 Admit that between September 2015 and March 0f 2016 you were a member of Profondo,  
15 LLC.

16 **RESPONSE TO REQUEST NO. 3:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 4:**

19 Admit that between September 2015 and March of 2016 you were a managing member of  
20 Alessi & Koenig, LLC.

21 **RESPONSE TO REQUEST NO. 4:**

22 Admit in part that Respondent was a member, but lacks recollection of whether  
23 Respondent was a "managing member" during the specific period referenced.

24 **REQUEST FOR ADMISSION NO. 5:**

25 Admit that Debbie Pike is your relative.

26 **RESPONSE TO REQUEST NO. 5:**

27 Admit.

28 **REQUEST FOR ADMISSION NO. 6:**

1 Admit that Profondo, LLC had an ownership interest in the Subject Property.

2 **RESPONSE TO REQUEST NO. 6:**

3 Admit.

4 **REQUEST FOR ADMISSION NO. 7:**

5 Admit that you initiated the proposal to Plaintiff that you would pledge the Subject  
6 Property as a security interest for the judgment obtained against Alessi & Koenig, LLC.

7 **RESPONSE TO REQUEST NO. 7:**

8 Deny.

9 **REQUEST FOR ADMISSION NO. 8:**

10 Admit that you reached a tentative agreement with Plaintiff to pledge the Subject Property  
11 as a security interest in the form of a deed of trust against the judgment that Plaintiff obtained  
12 against Alessi & Koenig, LLC in Case No. 3:09-cv-00428 and to make monthly payments to  
13 Plaintiff in the amount of \$3,750.00.

14 **RESPONSE TO REQUEST NO. 8:**

15 Deny.

16 **REQUEST FOR ADMISSION NO. 9:**

17 Admit that the tentative agreement referenced in Request No. 6 was reduced to a  
18 Stipulation and Order signed by the court.

19 **RESPONSE TO REQUEST NO. 9:**

20 Deny.

21 **REQUEST FOR ADMISSION NO. 10:**

22 Admit that you made two payments in the amount of \$3,750.00 to Plaintiff.

23 **RESPONSE TO REQUEST NO. 10:**

24 Deny.

25 **REQUEST FOR ADMISSION NO. 11:**

26 Admit that you never gave Plaintiff a security interest in the Subject Property.

27 **RESPONSE TO REQUEST NO. 11:**

28 Admit.

**REQUEST FOR ADMISSION NO. 12:**

Admit that between September of 2015 and October of 2015 Tom Bayard was your attorney and was authorized to negotiate an agreement on your behalf to stay judgment enforcement proceedings against Alessi & Koenig, LLC, including offering the Subject Property as a security interest.

**RESPONSE TO REQUEST NO. 12:**

Deny.

**REQUEST FOR ADMISSION NO. 13:**

Admit that you authorized Tom Bayard to make representations to Plaintiff's counsel that you had ownership and control over the Subject Property.

**RESPONSE TO REQUEST NO. 13:**

Deny.

**REQUEST FOR ADMISSION NO. 14:**

Admit that for the filing year of March 2015 through March 2016, you signed Profondo LLC's Nevada Secretary of State filing as owner.

**RESPONSE TO REQUEST NO. 14:**

Respondent lacks sufficient information or knowledge to admit or deny the request, and as such, denies the same.

**REQUEST FOR ADMISSION NO. 15:**

Admit that you did not have the ability to encumber the Subject Property.

**RESPONSE TO REQUEST NO. 15:**

Admit, and clarify that Respondent was without sufficient knowledge or information at the relevant period referenced as to whether or not such an ability might exist.

**REQUEST FOR ADMISSION NO. 16:**

Admit that in September of 2015 and October of 2015 you knew that you did not have the ability encumber the Subject Property.

**RESPONSE TO REQUEST NO. 16:**

Deny, and clarify that Respondent was without sufficient knowledge or information at the

1 relevant period referenced as to whether or not such an ability might exist.

2 **REQUEST FOR ADMISSION NO. 17:**

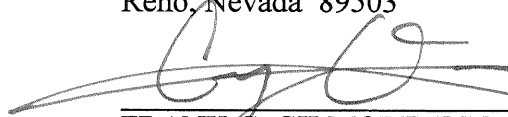
3 Admit that you did not disclose to Plaintiff that you did not have the ability to encumber  
4 the Subject Property until February of 2016.

5 **RESPONSE TO REQUEST NO. 16:**

6 Admit, and clarify that Respondent was without sufficient knowledge or information at  
7 the relevant period referenced as to whether or not such an ability might exist..

8 DATED this 6<sup>th</sup> day of September, 2019.

9 ROBISON, SHARP, SULLIVAN & BRUST  
10 71 Washington Street  
11 Reno, Nevada 89503

12   
13 FRANK C. GILMORE, ESQ. – NSB #10052  
14 CODY M. OLDHAM, ESQ. – NSB #14594  
15 Attorneys for Defendant David A. Alessi  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that on this date I caused to be served a true copy of **DAVID ANTHONY ALESSI'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** on all parties to this action by the method(s) indicated below:

☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Mark J. Bourassa, Esq.  
The Bourassa Law Group  
2350 W Charleston Blvd., Suite 100  
Las Vegas Nv 89102

\_\_\_\_\_ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark J. Bourassa, Esq.  
Email: [mbourassa@blgwins.com](mailto:mbourassa@blgwins.com)


\_\_\_\_\_ by placing an original or true copy thereof in a sealed envelope for personal delivery/hand delivery of original addressed to:

Mark J. Bourassa, Esq.  
The Bourassa Law Group  
2350 W Charleston Blvd., Suite 100  
Las Vegas Nv 89102

\_\_\_\_\_ by facsimile (fax) addressed to:

\_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 6<sup>th</sup> day of September, 2019.

  
Employee of Robison, Sharp, Sullivan & Brust

# **EXHIBIT “3”**

**Affidavit of David Alessi**

# **EXHIBIT “3”**

**Affidavit of David Alessi**

Steven T. Loizzi, Esq. (NV SBN 10920)  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033  
Fax: (702) 254-9044  
Attorney for Defendants

UNITED STATES FEDERAL DISTRICT COURT  
FOR THE DISTRICT OF NEVADA - NORTHERN DIVISION

MELINDA ELLIS, individually and on behalf  
of all others similarly situated

Plaintiff,

vs.

ALESSI TRUSTEE CORPORATION; DAVID  
ANTHONY ALESSI; and ALESSI &  
KOENIG, LLC.; and DOES I through XX,

Defendant(s).

ARROWCREEK HOMEOWNERS  
ASSOCIATION; ASSOCIATED  
MANAGEMENT, INC.; ALESSI TRUSTEE  
CORPORATION; ALESSI & KOENIG, LLC,

Counterclaimants,

vs.

MELINDA ELLIS, and DOES I through XX,

Counter-Defendant(s).

Case No. 3:09-cv-00428

**AFFIDAVIT OF DAVID ALESSI ESQ.**  
**IN SUPPORT OF OPPOSITION TO**  
**MOTION FOR ORDER TO SHOW**  
**CAUSE FOR FAILURE TO COMPLY**  
**WITH ORDER GRANTING**  
**STIPULATION RE JUDGMENT**  
**ENFORCEMENT**

STATE OF NEVADA            )  
  )ss.  
COUNTY OF CLARK         )

I, David Alessi, Esq., declare as follows:

1. I am attorney licensed to practice in the state of California. The attorney of record in this matter is Steve Loizzi, Esq.



- 1 2. I am the managing member of the law firm of Alessi & Koenig, LLC.
- 2
- 3 3. I am also a member of an investment company known as Profondo, LLC that is duly
- 4 organized under the laws of the State of Nevada. I have personal knowledge of the
- 5 matters stated herein and could competently testify thereto.
- 6
- 7
- 8 4. The managing member of Profondo, LLC is Debbie Pike. A true and correct copy of
- 9 the Nevada Secretary of State's internet records showing Ms. Pike as the managing
- 10 member of Profondo is attached hereto as **Exhibit "1."**
- 11
- 12
- 13 5. Profondo, LLC has an ownership interest in a number of investments including, *inter-*
- 14 *alia*, ownership of a parcel of commercial real estate commonly known as 9512
- 15 Flamingo Avenue (Units #100, #101, #102) , Las Vegas, Nevada, 89147.
- 16
- 17
- 18 6. I reached a tentative agreement to pledge this parcel of real property as security
- 19 against the judgment that Plaintiff obtained against Alessi & Koenig, LLC in this
- 20 case. This tentative agreement also provided for monthly payments to Plaintiff in the
- 21 amount of \$3,750.00.
- 22
- 23
- 24 7. It is this tentative agreement which formed the basis of the stipulation that was filed
- 25 by the parties and signed by this Court.
- 26
- 27
- 28 8. The specific terms of the Deed of Trust that would have encumbered the Flamingo
- property were never agreed upon. With respect to the security instrument, it was

1 simply an “agreement to agree.” *See generally, Cable & Computer Technology Inc.*  
2 *v. Lockheed Sanders, Inc.*, 214 F. 3d 1030, 1035 (2000) (stating general proposition  
3 that an agreement to agree, lacking essential terms, is unenforceable); Furthermore, in  
4 order to create an enforceable security interest, a written instrument is required.  
5 Nevada Revised Statutes, §111.205.  
6

7  
8 9. When I proposed that the Flamingo Property be used as security for the AK  
9 judgment, I had a good faith belief that I would be able to get Ms. Pike to agree to the  
10 proposal.  
11

12  
13 10. When the title company that was hired to prepare the security instrument asked for  
14 written confirmation that Profondo agreed to hypothecate the Flamingo Property, I  
15 was very surprised when Ms. Pike indicated that she would not agree to do so.  
16

17  
18 11. When I learned that the Flamingo Property would not be available to use as security, I  
19 informed Plaintiff’s counsel, in person, as soon as I was able to do so. I believe that  
20 this occurred on or about February 8, 2016.  
21

22 12. I have been working with Plaintiff’s counsel on the judgment issues with full  
23 disclosure and cooperation. This includes a meeting with Mr. Bourassa on February  
24 8, 2016 during which I time I explained the financial condition of Alessi & Koenig  
25 and made several proposals for addressing the payment issue.  
26  
27  
28

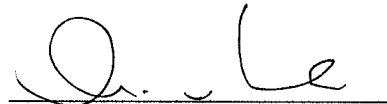
13. Although there is no complete agreement in place, I have caused two payments of \$3,750.00 to be made to Plaintiff. True and correct copies of these checks (account numbers redacted) are attached hereto as **Exhibit "2."**

14. I made these payments in good faith and intend to continue to make monthly payments until such time as the pending appeal is resolved by the 9<sup>th</sup> Circuit Court of Appeals. (Case No. 15-16493)

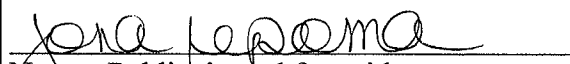
I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct, I have personal knowledge thereof, and that if called to testify thereto, I could and would competently do so.

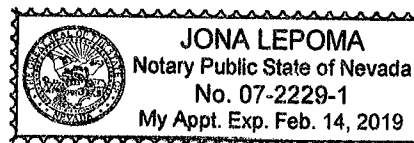
FURTHER AFFIANT SAYETH NAUGHT.

DATED this 16th day of March, 2016.

  
AFFIANT

SUBSCRIBED AND SWORN before me  
this 16<sup>th</sup> day of March, 2016.

  
Notary Public, in and for said  
County and State.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of March, 2016, I caused service of a true and correct copy of the foregoing **AFFIDAVIT OF DAVID ALESSI ESQ. IN SUPPORT OF OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE FOR FAILURE TO COMPLY WITH ORDER GRANTING STIPULATION RE JUDGMENT**

**ENFORCEMENT** to be made electronically via the Case Management/Electronic Case Files (CM/ECF) system, as well as via mail by depositing the same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Mark J. Bourassa, Esq.  
Trent L. Richards, Esq.  
The Bourassa Law Group, LLC  
8668 Spring Mountain Road, Suite 101  
Las Vegas, Nevada 89117-4132  
*Attorney for Plaintiff/Respondent,  
Melinda Ellis, individually and On Behalf of Herself and All Others Similarly Situated*

  
an employee of  
ALESSI & KOENIG, LLC

# **EXHIBIT “4”**

## **Order**

# **EXHIBIT “4”**

## **Order**

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 MELINDA ELLIS, individually and on behalf  
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 ALESSI TRUSTEE CORPORATION;  
15 DAVID ANTHONY ALESSI; and  
16 ALESSI & KOENIG, LLC.; and  
17 DOES I through XX,

18 Defendants.

Case No.: 3:09-cv-00428-LRH-RAM

**ORDER GRANTING STIPULATION  
REGARDING JUDGMENT  
ENFORCEMENT**

18 **ORDER**

19 WHEREAS, on July 14, 2015, the Court entered an Amended Judgment [Docket No.  
20 218] in a Civil Case;

21 WHEREAS, Defendants filed a Notice of Appeal to United States Court of Appeals for  
22 the Ninth Circuit [Docket No. 220] on February 27, 2015;

23 WHEREAS, the appeal of the judgment entered against Defendants was assigned case  
24 number 15-16493 by the United States Court of Appeals for the Ninth Circuit;

25 WHEREAS, Defendants have not filed a supercedeas bond with the Court so as to stay  
26 enforcement of the judgment entered against them; and  
27  
28

1 WHEREAS, the Plaintiff and Defendants have reached an agreement to stay  
2 enforcement proceedings in accordance with the Stipulation Regarding Judgment Enforcement  
3 [Docket No. 233] filed on November 24, 2015.

4 WHEREFORE, it is hereby ordered that:

5 1. Plaintiff will refrain from further judgment enforcement proceedings against  
6 Defendant Alessi and Koenig, LLC;

7 2. Defendant Alessi & Koenig, LLC will execute a promissory note for the benefit  
8 of Plaintiff and her attorneys;

9 3. The promissory note shall be in the amount of the judgment as entered against  
10 Defendant Alessi and Koenig, LLC in the amount of Three Hundred Eighty-Three Thousand  
11 Nine Hundred Ninety Dollars and Seven Cents (\$383,990.07), plus interest;

12 4. Plaintiff will also be granted a first priority security interest in the form of a deed  
13 of trust against certain real property identified as 9512 West Flamingo Road, Suite 100 (APN  
14 163-18-819-016), Suite 101 (APN 163-18-819-017), and Suites 102-103 (APN 163-18-819-  
15 035);

16 5. The deed of trust shall be in the amount of the judgment as entered against  
17 Defendant Alessi and Koenig, LLC in the amount of Three Hundred Eighty-Three Thousand  
18 Nine Hundred Ninety Dollars and Seven Cents (\$383,990.07), plus interest.

19 6. Interest will be calculated at the federal statutory rate as awarded in the  
20 Judgment;

21 7. Defendant Alessi & Koenig, LLC shall make monthly payment to Plaintiff  
22 towards the Promissory note in the amount of Three Thousand Seven Hundred Fifty Dollars  
23 (\$3,750.00) (the "Monthly Payment").

24 8. The promissory note shall become due and payable in full sixty (60) days after  
25  
26  
27  
28

1 the final order regarding the disposition of the appeal;

2 9. Defendant Alessi and Koenig, LLC shall be deemed in default of the promissory  
3 note if any Monthly Payment is unpaid for a period of 15 days, or if the promissory note is not  
4 paid in full within 15 days of it becoming due.


5 10. Plaintiff and her counsel are entitled to their attorney fees and costs incurred in  
6 any enforcement or foreclosure proceedings relating to the promissory note and/or the deed of  
7 trust.

8 11. In the event that Defendant Alessi and Koenig prevails on the appeal, Plaintiff  
9 and her counsel shall retain all payments made without recourse by Defendant Alessi and  
10 Koenig;  
11

12 12. Upon executing of this agreement, all collection efforts against Alessi and  
13 Koenig shall immediately cease and any existing or pending writs of execution or possession  
14 shall be recalled and terminated. Any funds collected from Alessi and Koenig after the  
15 execution of this stipulation shall be promptly returned.  
16

17 IT IS SO ORDERED.

18 DATED this 16th day of December 2015  
19

20  
21   
22 LARRY R. HICKS  
23 UNITED STATES DISTRICT COURT  
24  
25  
26  
27  
28



# **EXHIBIT “5”**

## **Payments**

# **EXHIBIT “5”**

## **Payments**

WELLS  
FARGO

Wells Fargo Business Online®

## View Check Copy

Check Number	Date Posted	Check Amount	Account Number
1578	02/12/16	\$3,750.00	BUSINESS CHECKING XXXXX [REDACTED]

WELLS FARGO BANK, N.A.  
www.wellsfargo.com  
24-7074-3212

1578  
02/12/16

LAWYERS GROUP LLP  
8508 W FLAMINGO RD STE 205  
LAS VEGAS, NV 89147-6721

PAY TO THE ORDER OF Law Offices of Mark Bourassa \$ 3,750.00

Three Thousand Seven Hundred Fifty and 00/100 DOLLARS

Law Offices of Mark Bourassa

MEMO: [REDACTED]

AUTHORIZED SIGNATURE [REDACTED]

[REDACTED]

Equal Housing Lender

© 1995 - 2016 Wells Fargo. All rights reserved.



Wells Fargo Business Online®

## View Check Copy

Check Number	Date Posted	Check Amount	Account Number
1606	03/09/16	\$3,750.00	BUSINESS CHECKING XXXXX [REDACTED]

1606

3/8/2016

LAWYERS GROUP LLP  
9800 W PLAMINGO RD STE 200  
LAS VEGAS, NV 89147-5721

WELLS FARGO BANK, N.A.  
WWW.WELLSFARGO.COM  
64-16743314

PAY TO THE ORDER OF Mark BoLrasa \$ \*\*3,750.00

Three Thousand Seven Hundred Fifty and 00/100 DOLLARS

Mark BoLrasa

MEMO [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Equal Housing Lender

© 1995 - 2016 Wells Fargo. All rights reserved.

# **EXHIBIT “6”**

**David Anthony Alessi’s Responses to  
Plaintiff’s First Set of Requests  
Interrogatories**

# **EXHIBIT “6”**

**David Anthony Alessi’s Responses to  
Plaintiff’s First Set of Requests  
Interrogatories**

1 FRANK C. GILMORE, ESQ. – NSB #10052  
fgilmore@rssblaw.com  
2 CODY M. OLDHAM, ESQ. – NSB #14594  
coldham@rssblaw.com  
3 Robison, Sharp, Sullivan & Brust  
71 Washington Street  
4 Reno, Nevada 89503  
Telephone: (775) 329-3151  
5 Facsimile: (775) 329-7169  
Attorneys for Defendant David  
6 A. Alessi

7  
8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10  
11 MELINDA JAMES,

Case No.: 2:18-cv-01398-JAD-CWF

12 Plaintiff,

13 vs.

**DAVID ANTHONY ALESSI'S  
RESPONSES TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

14 DAVID ANTHONY ALESSI, an individual

15 Defendant.  
16 \_\_\_\_\_/

17 COMES NOW, Defendant, DAVID ANTHONY ALESSI (hereinafter referred to as  
18 “Respondent”), by and through his attorney of record, and hereby objects and responds to Plaintiff,  
19 MELINDA JAMES’s (“Plaintiff”) First Set of Interrogatories as follows:

20 **PRELIMINARY STATEMENT**

21 These responses and objections are not intended to be, and should not be interpreted as, a  
22 waiver of any objection to the admissibility of any such information on the grounds of privilege,  
23 work product doctrine, hearsay, relevance or any other objection.

24 Additionally, Respondent objects to each interrogatory to the extent that it calls for  
25 information protected by attorney-client privilege and/or work product doctrine. Any inadvertent  
26 disclosure of information protected by the aforementioned privileges, or any other applicable  
27 privileges and/or immunities recognized by statute or case law shall not be deemed a waiver of  
28 the privilege/immunity.

1 Finally, these responses are based solely on information presently known to Respondent.  
2 Further discovery may lead to additions to, changes in, or modifications of these responses.

3 Accordingly, these responses are being given without prejudice to Respondent's right to  
4 produce subsequent discovery evidence and to introduce the same at trial.

5 **INTERROGATORY NO. 1:**

6 Identify each person providing any information used to respond to these Interrogatories or  
7 Plaintiff's First Set of Requests for Production of Documents to David Anthony Alessi, and for  
8 each person identified, summarize the information provided.

9 **RESPONSE TO INTERROGATORY NO. 1:**

10 David Anthony Alessi.

11 **INTERROGATORY NO. 2:**

12 Identify the names, addresses, and telephone numbers of every person(s), known to you or to your  
13 attorneys, who has or claims to have any knowledge concerning the facts and circumstances  
14 described in the First Amended Complaint or in your answers to any Interrogatories in this case,  
15 but not limited to; eye-witnesses to such incidents and other persons having knowledge thereof.  
16 For each person identified, please state what knowledge that person has or claims to have.

17 **RESPONSE TO INTERROGATORY NO. 2:**

18 Debi Pike, Member, Profondo, LLC. 9500 W Flamingo rd. 204, LV NV 89147. 702-222-2391

19 **INTERROGATORY NO. 3:**

20 Please identify your relationship with Debbie Pike.

21 **RESPONSE TO INTERROGATORY NO. 3:**

22 Siblings.

23 **INTERROGATORY NO. 4:**

24 Please identify each and every of any kind of communication (i.e., oral or written) between you  
25 and Debbie Pike from September 2015 to March 2016 relating in any way to the Subject Property  
26 and identify all documents relating thereto and persons having knowledge thereof.

27 **RESPONSE TO INTERROGATORY NO. 4:**

28 Respondent does not recall any specific communication relevant to the request.



**INTERROGATORY NO. 5:**

Please identify your relationship with Alessi & Koenig, LLC.

**RESPONSE TO INTERROGATORY NO. 5:**

Member.

**INTERROGATORY NO. 6:**

Please identify your relationship with Lawyers Group, LLP.

**RESPONSE TO INTERROGATORY NO. 6:**

Member.

**INTERROGATORY NO. 7:**

To the extent that it is your position that there is no valid contract between Plaintiff and Defendant, please state each and every fact and identify each and every document that supports your position.

**RESPONSE TO INTERROGATORY NO. 7:**

Respondent was not a party to the contract, was not a judgment debtor. The proposed agreement was declined by Debi Pike, on behalf of Profondo, pursuant to the Amended Operating Agreement.

**INTERROGATORY NO. 8:**

To the extent it is your position that you had no obligation to perform under the terms of the Order Granting Stipulation Regarding Judgment Enforcement, please state each and every fact and identify each and every document that supports your position.

**RESPONSE TO INTERROGATORY NO. 8:**

Respondent is not A&K, not a party to the contract. There was no meeting of the minds; the parties never agreed on essential material terms – i.e. interest rate, maturity date.

**INTERROGATORY NO. 9:**

To the extent it is your position that “Plaintiff failed to mitigate her damages” as referenced in your Second Affirmative Defense, please state each and every fact and identify each and every document that supports your position.

**RESPONSE TO INTERROGATORY NO. 9:**

Alessi & Koenig offered Plaintiff the assets of A&K as payment of the judgment.

///

1 **INTERROGATORY NO. 10:**

2 To the extent it is your position that “to the extent Defendant’s actions violated the law, such  
3 actions were the result of a bona fide error notwithstanding reasonable procedures designed to  
4 avoid such error(s)” as referenced in your Fourth Affirmative Defense, please state each and every  
5 fact and identify each and every document that supports your opinion.

6 **RESPONSE TO INTERROGATORY NO. 10:**

7 Respondent is not A&K, not a party to the contract. There was no meeting of the minds; the  
8 parties never agreed on essential material terms– i.e. interest rate, maturity date.

9 **INTERROGATORY NO. 11:**

10 To the extent it is your position that “Plaintiff’s claims may be precluded, in whole or part, to the  
11 extent Plaintiff’s damages, if any, were caused by Plaintiff’s acts and/or omissions” as referenced  
12 in your Fifth Affirmative Defense, please state each and every fact and identify each and every  
13 document that supports your opinion.

14 **RESPONSE TO INTERROGATORY NO. 11:**

15 Plaintiff’s refusal of the offer of the assets of A&K as payment of the judgment.

16 **INTERROGATORY NO. 12:**

17 To the extent it is your position that “Plaintiff’s claims may be precluded, in whole or part, to the  
18 extent Plaintiff’s purported damages, if any, were caused by third parties over whom the Defendant  
19 has no control” as referenced in your Sixth Affirmative Defense, please state each and every fact  
20 and identify each and every document that supports your position.

21 **RESPONSE TO INTERROGATORY NO. 12:**

22 A&K and Debi Pike are third parties over whom the Defendant has no control.

23 **INTERROGATORY NO. 13:**

24 To the extent it is your position that “Plaintiff’s and/or claims are barred by release, contract  
25 provision, waiver, unclean hands, laches, estoppel and/or res judicata” as referenced in your Eighth  
26 Affirmative Defense, please state each and every fact and identify each and every document that  
27 supports your position.

28 ///



1 **RESPONSE TO INTERROGATORY NO. 13:**

2 Res judicata – A&K’s Chapter 7 Bankruptcy; the contract by Amended Operating Agreement.

3 **INTERROGATORY NO. 14:**

4 To the extent it is your position that “Plaintiff’s contract claims fails for lack of consideration and  
5 failure of consideration” as referenced in your Ninth Affirmative Defense, please state each and  
6 every fact and identify each and every document that supports your position.

7 **RESPONSE TO INTERROGATORY NO. 14:**

8 Respondent is not A&K, not a party to the contract. There was no meeting of the minds; the  
9 parties never agreed on essential material terms– i.e. interest rate, maturity date.

10 **INTERROGATORY NO. 15:**

11 For each Response to Plaintiff’s Request for Admission served in this matter that is not an  
12 unqualified admission:

- 13 a. State the number of the request;
- 14 b. State all facts which base your response;
- 15 c. State the names, addresses, and telephone numbers of all persons who have  
16 knowledge of those facts; and
- 17 d. Identify all documents and other tangible things that support your response and  
18 state the name, address, and telephone number of the person who has each  
19 document or thing.

20 **RESPONSE TO INTERROGATORY NO. 15:**

- 21 • a. #7 – Deny. b. Respondent does not recall who initiated the proposal, but affirms  
22 there was no personal obligation for the judgment against A&K, and never intended  
23 to create one in negotiating the agreement never reached. c. No other persons  
24 known to Respondent. d. No additional documents known to Respondent.
- 25 • a. #8 – Deny. b. Respondent did not personally agree to assume the obligation for  
26 the judgment against A&K. c. No other persons known to Respondent. d. No  
27 additional documents known to Respondent.
- 28 • a. #9 – Deny. b. Respondent does not acknowledge a tentative agreement was

reached. c. No other persons known to Respondent. d. No additional documents known to Respondent.

- a. #10 – Deny. b. Respondent personally made no payments. c. No other persons known to Respondent. d. No additional documents known to Respondent.
- a. #12 – Deny. b. Tom Bayard was not a Nevada attorney, and later found to be in active CA Bar discipline, and was not eligible to make such a representation. c. Tom Bayard, location unknown. d. No additional documents known to Respondent.
- a. #13 – Deny. b. Respondent made no such authorization. c. Tom Bayard, location unknown. d. No additional documents known to Respondent.
- a. #14 – Lacked Sufficient Information. b. Respondent does not recall whether or not he signed the documents referenced. c. Debi Pike, contact information provided above. d. No additional documents known to Respondent.
- a. #15 – Admit and clarify. b. Respondent was without sufficient information at the time. c. Debi Pike, contact information provided above. d. No additional documents known to Respondent.
- a. #16 – Deny. b. Respondent was without sufficient information at the time. c. Debi Pike, contact information provided above. d. No additional documents known to Respondent.

**INTERROGATORY NO. 16:**


Identify your relationship with MCLV Holdings LLC.

**RESPONSE TO INTERROGATORY NO. 16:**

None.

DATED this 13<sup>th</sup> day of September, 2018.

ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, Nevada 89503

  
FRANK C. GILMORE, ESQ. – NSB #10052  
CODY M. OLDHAM, ESQ. – NSB #14594  
Attorneys for Defendant David A. Alessi

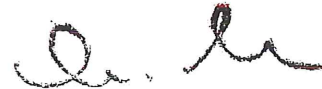
**VERIFICATION**

STATE OF Nevada )  
COUNTY OF Clark ) ss.

David Anthony Alessi, being first duly sworn, deposes and says under penalty of perjury:

That he is the Defendant in this matter; that he has read the attached **DAVID ANTHONY ALESSI'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and knows the contents thereof and that the same are true of his own knowledge, except as to the matters stated therein on information and belief, and as to those matters he believes them to be true.

Dated this 12 day of September, 2019.

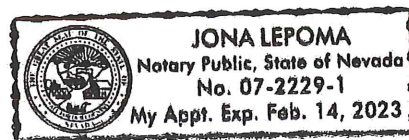


\_\_\_\_\_  
DAVID ANTHONY ALESSI

STATE OF Nevada )  
COUNTY OF Clark ) ss,

Subscribed and Sworn to before me  
this 12<sup>th</sup> day of September, 2019, by  
David Anthony Alessi.

Jona Lepoma  
NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that on this date I caused to be served a true copy of **DAVID ANTHONY ALESSI'S** **RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** on all parties to this action by the method(s) indicated below:

☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Mark J. Bourassa, Esq.  
The Bourassa Law Group  
2350 W Charleston Blvd., Suite 100  
Las Vegas Nv 89102

☐ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark J. Bourassa, Esq.  
Email: [mbourassa@blgwins.com](mailto:mbourassa@blgwins.com)

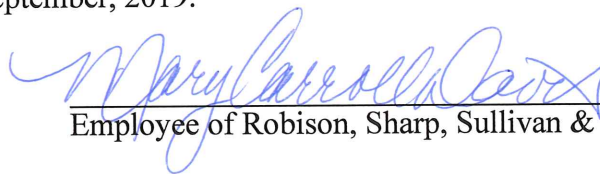
☐ by placing an original or true copy thereof in a sealed envelope for personal delivery/hand delivery of original addressed to:

Mark J. Bourassa, Esq.  
The Bourassa Law Group  
2350 W Charleston Blvd., Suite 100  
Las Vegas Nv 89102

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 13<sup>th</sup> day of September, 2019.

  
Employee of Robison, Sharp, Sullivan & Brust



**EXHIBIT “7”**  
**Amended Operating Agreement of**  
**Profondo, LLC**

**EXHIBIT “7”**  
**Amended Operating Agreement of**  
**Profondo, LLC**

AMENDED OPERATING AGREEMENT  
PROFONDO, LLC


This AMENDED OPERATING AGREEMENT is made on April 2, 2014, 2010 between DAVID ALESSI (98% interest) and DEBI PIKE (2% interest).

1. NAME AND BUSINESS. The parties have formed a limited liability company under the name of PROFONDO, LLC to conduct a residential and commercial real estate investment company. The principal office of the business is in Nevada.
2. TERM. The company began on March 2, 2005, and shall continue until terminated as herein provided.
3. CAPITAL. The capital of the company shall be contributed in cash by the owners as follows: A separate capital account shall be maintained for each company owner. Neither owner shall withdraw any part of his capital account. Upon the demand of either owner, the capital accounts of the owners shall be maintained at all times in the proportions in which the owners share in the profits and losses of the company.
4. MANAGEMENT. The company is and shall be manager-managed. The manager of the company is Debi Pike.
5. MANAGER POWERS. The manager of the company shall have broad managerial powers to take any action deemed necessary for the benefit of the company. These managerial powers include, *inter-alia*, the power to purchase and manage real property as well as the power to borrow money and encumber any property owned by the company under any terms and conditions deemed appropriate by the company's manager. Any such act by the manager shall be deemed fully binding on the company, the manager and the other members of the company.
6. PROFIT AND LOSS. The net profits of the company shall be divided between the owners and the net losses shall be borne by them as follows: DAVID ALESSI 98% AND DEBI PIKE 2%.
7. BANKING. All funds of the limited liability partnership shall be deposited in its name in such checking account or accounts as shall be designated by the company owners. All withdrawals therefrom are to be made upon checks signed by either owner.
8. BOOKS. The company books shall be maintained at the principal office of the company, and each owner shall at all times have access thereto.
9. VOLUNTARY TERMINATION. The company may be dissolved at any time by agreement of the owners, in which event the owners shall proceed with reasonable promptness to liquidate the business of the company. The company name shall be sold with the other assets of the business. The assets of the company business shall be used and distributed in the following order: (a) to pay or provide for the payment of all company liabilities and liquidating expenses and obligations; (b) to equalize the income accounts of the owners; (c) to discharge the balance of the income account of the owners; (d) to equalize the capital accounts of the owners; and (e) to discharge the balance of the capital accounts of the owners.

10. DEATH. Upon the death of either owner, the surviving owner shall have the right either to purchase the interest of the decedent in the company or to terminate and liquidate the company business. If the surviving owner elects to purchase the decedent's interest, he shall serve notice in writing of such election, within three months after the death of the decedent, upon the executor or administrator of the decedent, or, if at the time of such election no legal representative has been appointed, upon any one of the known legal heirs of the decedent at the last-known address of such heir. (a) If the surviving owner elects to purchase the interest of the decedent in the company, the purchase price shall be equal to the decedent's capital account as at the date of his death plus the decedent's income account as at the end of the prior fiscal year, increased by his share of company profits or decreased by his share of company losses for the period from the beginning of the fiscal year in which his death occurred until the end of the calendar month in which his death occurred, and decreased by withdrawals charged to his income account during such period. No allowance shall be made for goodwill, trade name, patents, or other intangible assets, except as those assets have been reflected on the company books immediately prior to the decedent's death; but the survivor shall nevertheless be entitled to use of the trade name of the company. (b) Except as herein otherwise stated, the procedure as to liquidation and distribution of the assets of the company business shall be the same as stated in paragraph 10 with reference to, voluntary termination.

11. ARBITRATION. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. In witness whereof the parties have signed this Agreement.

IN WITNESS WHEREOF, the/I have executed this Agreement the date first above written.

  
David Alessi

SIGNED and SWORN to before me this  
2<sup>nd</sup> day of April, 2014

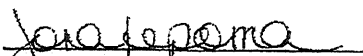
  
Notary Public, Clark County Nevada



IN WITNESS WHEREOF, the/I have executed this Agreement the date first above written.

  
Debi Pike

SIGNED and SWORN to before me this  
2<sup>nd</sup> day of April, 2014

  
Notary Public, Clark County Nevada



# **EXHIBIT “8”**

**Profondo, LLC’s Annual List Filing  
for 2015**

# **EXHIBIT “8”**

**Profondo, LLC’s Annual List Filing  
for 2015**



INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE  
BUSINESS LICENSE APPLICATION OF:

ENTITY NUMBER

PROFONDO, LLC

E0133282005-1

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF MAR, 2015 TO MAR, 2016

USE BLACK INK ONLY - DO NOT HIGHLIGHT

\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvsliverflume.gov](http://www.nvsliverflume.gov)\*\*☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)**IMPORTANT:** Read instructions before completing and returning this form.

1. Print or type names and addresses, either residence or business, for all manager or managing members. **A Manager, or if none, a Managing Member** of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
2. If there are additional managers or managing members, attach a list of them to this form.
3. Return completed form with the fee of \$125.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
4. State business license fee is \$200.00. Effective 2/1/2010, \$100.00 must be added for failure to file form by deadline.
5. Make your check payable to the Secretary of State.
6. **Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
7. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
8. Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

ANNUAL LIST FILING FEE: \$125.00 LATE PENALTY: \$75.00 (if filing late)

BUSINESS LICENSE FEE: \$200.00 LATE PENALTY: \$100.00 (if filing late)

Filed in the office of <i>Barbara K. Cegavske</i> Barbara K. Cegavske Secretary of State State of Nevada	Document Number <b>20150221898-58</b> Filing Date and Time <b>05/15/2015 11:49 AM</b> Entity Number <b>E0133282005-1</b>
--	---

(This document was filed electronically.)  
ABOVE SPACE IS FOR OFFICE USE ONLY**CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW**☐ Pursuant to NRS Chapter 76, this entity is exempt from the business license fee. Exemption code: **NOTE:** If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility form will result in rejection, which could result in late fees.**NRS 76.020 Exemption Codes**

001 - Governmental Entity  
005 - Motion Picture Company  
006 - NRS 680B.020 Insurance Co.

NAME DEBI PIKE		MANAGER OR MANAGING MEMBER	
ADDRESS 9440 W. SAHARA AVE., STE. 237 , USA	CITY LAS VEGAS	STATE NV	ZIP CODE 89117
NAME		MANAGER OR MANAGING MEMBER	
ADDRESS	CITY	STATE	ZIP CODE
NAME		MANAGER OR MANAGING MEMBER	
ADDRESS	CITY	STATE	ZIP CODE
NAME		MANAGER OR MANAGING MEMBER	
ADDRESS	CITY	STATE	ZIP CODE

None of the managers or managing members identified in the list of managers and managing members has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

**X** DAVID ALESSI

Title

OWNER

Date

5/15/2015 11:49:03 AM

**Signature of Manager, Managing Member or  
Other Authorized Signature**Nevada Secretary of State List ManorMem  
Revised: 1-5-15

P000038

# **EXHIBIT “9”**

## **Bankruptcy Petition**

# **EXHIBIT “9”**

## **Bankruptcy Petition**

**Fill in this information to identify your case:**

United States Bankruptcy Court for the:

DISTRICT OF NEVADA

Case number *(if known)*Chapter 7☐ Check if this an amended filing

## Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

4/16

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Alessi & Koenig, LLC

2. All other names debtor used in the last 8 years

Include any assumed names, trade names and *doing business as* names

3. Debtor's federal Employer Identification Number (EIN) 26-3435721

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

9500 W. Flamingo Rd., Ste. 205  
Las Vegas, NV 89147

Number, Street, City, State &amp; ZIP Code

P.O. Box, Number, Street, City, State &amp; ZIP Code

Clark

County

Location of principal assets, if different from principal place of business

Number, Street, City, State &amp; ZIP Code

5. Debtor's website (URL) \_\_\_\_\_

6. Type of debtor

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))☐ Partnership (excluding LLP)☐ Other. Specify: \_\_\_\_\_

Debtor **Alessi & Koenig, LLC**  
Name

Case number (if known)

**7. Describe debtor's business**

A. Check one:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the above

B. Check all that apply

- ☐ Tax-exempt entity (as described in 26 U.S.C. §501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor.  
See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.

**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

Check one:

- ☒ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11. Check all that apply:

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,566,050 (amount subject to adjustment on 4/01/19 and every 3 years after that).
- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

- ☒ No.
- ☐ Yes.

If more than 2 cases, attach a separate list.

District	_____	When	_____	Case number	_____
District	_____	When	_____	Case number	_____

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- ☒ No
- ☐ Yes.

List all cases. If more than 1, attach a separate list

Debtor	_____	Relationship	_____
District	_____	When	_____
		Case number, if known	_____

Debtor **Alessi & Koenig, LLC**  
Name

Case number (if known)

**11. Why is the case filed in this district?***Check all that apply:*

- ☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**☒ No☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.**Why does the property need immediate attention?** (*Check all that apply.*)☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).☐ Other \_\_\_\_\_**Where is the property?** \_\_\_\_\_

Number, Street, City, State &amp; ZIP Code

**Is the property insured?**☐ No☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information****13. Debtor's estimation of available funds***Check one:*☐ Funds will be available for distribution to unsecured creditors.☒ After any administrative expenses are paid, no funds will be available to unsecured creditors.**14. Estimated number of creditors**☐ 1-49☐ 50-99☐ 100-199☒ 200-999☐ 1,000-5,000☐ 5001-10,000☐ 10,001-25,000☐ 25,001-50,000☐ 50,001-100,000☐ More than 100,000**15. Estimated Assets**☒ \$0 - \$50,000☐ \$50,001 - \$100,000☐ \$100,001 - \$500,000☐ \$500,001 - \$1 million☐ \$1,000,001 - \$10 million☐ \$10,000,001 - \$50 million☐ \$50,000,001 - \$100 million☐ \$100,000,001 - \$500 million☐ \$500,000,001 - \$1 billion☐ \$1,000,000,001 - \$10 billion☐ \$10,000,000,001 - \$50 billion☐ More than \$50 billion**16. Estimated liabilities**☐ \$0 - \$50,000☐ \$50,001 - \$100,000☐ \$100,001 - \$500,000☐ \$500,001 - \$1 million☒ \$1,000,001 - \$10 million☐ \$10,000,001 - \$50 million☐ \$50,000,001 - \$100 million☐ \$100,000,001 - \$500 million☐ \$500,000,001 - \$1 billion☐ \$1,000,000,001 - \$10 billion☐ \$10,000,000,001 - \$50 billion☐ More than \$50 billion

Debtor **Alessi & Koenig, LLC**  
Name

Case number (if known)

**Request for Relief, Declaration, and Signatures****WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**17. Declaration and signature  
of authorized  
representative of debtor**

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **December 13, 2016**  
MM / DD / YYYY**X /s/ David Alessi**

Signature of authorized representative of debtor

**David Alessi**

Printed name

Title **Managing Member****18. Signature of attorney****X /s/ Ryan Alexander**

Signature of attorney for debtor

Date **December 13, 2016**

MM / DD / YYYY

**Ryan Alexander**

Printed name

**The Law Office of Ryan Alexander PLLC**

Firm name

**3017 West Charleston Blvd Suite 58  
Las Vegas, NV 89102**

Number, Street, City, State &amp; ZIP Code

Contact phone **702-868-3311**Email address **ryan@ryanalexander.us****10845**

Bar number and State

Alessi & Koenig, LLC  
9500 W. Flamingo Rd., Ste. 205  
Las Vegas, NV 89147

Ryan Alexander  
The Law Office of Ryan Alexander PLLC  
3017 West Charleston Blvd Suite 58  
Las Vegas, NV 89102

Artin Voskanian  
c/o James Adams, Esq.  
8010 W. Sahara Ave. Ste 260  
Las Vegas, NV 89117

Edward D. Boyack Esq.  
401 N Buffalo Ste. 202  
Las Vegas, NV 89145

Estates at Seven Hills HOA  
4131 Gunn Highway  
Tampa, FL 33618

Levi Jones  
c/o Kolesar & Latham  
400 S Rampart #400  
Las Vegas, NV 89145

Melinda Ellis James  
c/o Bourassa Law Group  
8668 Spring Mountain Rd. #101  
Las Vegas, NV 89117

Southern Highlands Homeowners Ass'n  
11411 Southern Highlands Pkwy  
Ste. 100  
Las Vegas, NV 89141

Tamara Peterson, Esq.  
10001 Park Run Drive  
Las Vegas, NV 89145

**United States Bankruptcy Court  
District of Nevada**

In re **Alessi & Koenig, LLC**

Debtor(s)

Case No.

Chapter

**7**

**CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)**

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **Alessi & Koenig, LLC** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

☒ None [*Check if applicable*]

**December 13, 2016**

Date

**/s/ Ryan Alexander**

**Ryan Alexander**

Signature of Attorney or Litigant

Counsel for **Alessi & Koenig, LLC**

**The Law Office of Ryan Alexander PLLC**

**3017 West Charleston Blvd Suite 58**

**Las Vegas, NV 89102**

**702-868-3311 Fax: 702-822-1133**

**ryan@ryanalexander.us**



# **EXHIBIT “10”**

## **Grant, Bargain, Sale Deed**

# **EXHIBIT “10”**

## **Grant, Bargain, Sale Deed**

Inst #: 20160930-0005319

Fees: \$20.00 N/C Fee: \$0.00

RPTT: \$4207.50 Ex: #

09/30/2016 03:25:19 PM

Receipt #: 2889250

Requestor:

FIDELITY NATIONAL TITLE - L

Recorded By: RYUD Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 163-18-819-016 163-18-819-035 163-18-819-017

Affix R.P.T.T. \$4,207.50

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE

WHEN RECORDED MAIL TO and MAIL TAX  
STATEMENT TO:

MCLV HOLDINGS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY

9512 W. FLAMINGO RD #102

LAS VEGAS, NV 89147

ESCROW NO: 00056541-118-DS

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That  
Profondo, LLC, a Nevada limited liability company

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby  
Grant, Bargain Sell and convey to

MCLV Holdings, LLC, a Nevada limited liability company

all that real property situated in the County of Clark, State of Nevada, bounded and described as  
follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

Subject to: 1. Taxes for the current fiscal year, paid current.  
2. Conditions, covenants, restrictions, reservations, rights, rights of way and  
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging  
or in anywise appertaining.

Witness my/our hand(s) this 23 day of September, 2016.

Profondo, LLC, a Nevada limited liability  
company



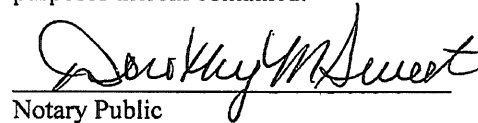
By: Debi Pike, Manager

STATE OF NEVADA  
COUNTY OF CLARK

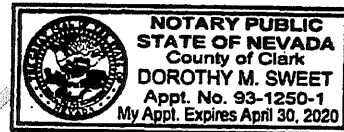
} ss:

On this 9-23-16  
appeared before me, a Notary Public,  
Debi Pike

personally known or proven to me to  
be the person(s) whose name(s) is/are  
subscribed to the above instrument,  
who acknowledged that he/she/they  
executed the instrument for the  
purposes therein contained.

  
Notary Public

My commission expires: 4-30-20



NOTARY JURAT FOR GRANT, BARGAIN, SALE DEED  
FOR ESCROW NO.: 00056541-118DS

Escrow No. 00056541 - 118 - DS  
*Grant, Bargain, Sale Deed....Continued*

**EXHIBIT A**

**PARCEL ONE (1): (COMMON ELEMENTS)**

AN UNDIVIDED 25.6666% AS TO UNIT 100 AND AN UNDIVIDED 24.7344% AS TO UNIT 101 AND AN UNDIVIDED 23.9540% AS TO UNIT 102 AND AN UNDIVIDED 25.6449% AS TO UNIT 103 ALLOCATED INTEREST AS TENANT-IN-COMMON IN AND TO THE COMMON ELEMENTS OF BUILDING 2 OF FLAMINGO POINTE CORPORATE CENTRE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 125 OF PLATS, PAGE 39, AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED SEPTEMBER 27, 2005 IN BOOK 20050927 AS DOCUMENT NO. 01550, AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED OCTOBER 26, 2005 IN BOOK 20051026 AS DOCUMENT NO. 01293, OFFICIAL RECORDS; SAID ALLOCATED INTEREST BEING MORE PARTICULARLY SET FORTH IN AND SUBJECT TO THAT CERTAIN "AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FLAMINGO POINTE CORPORATE CENTRE, A COMMERCIAL CONDOMINIUM" RECORDED FEBRUARY 7, 2006 IN BOOK 20060207 AS DOCUMENT NO. 02131, OFFICIAL RECORDS, AND ANY SUBSEQUENT AMENDMENTS AND/OR SUPPLEMENTS THERETO (HEREAFTER, THE DECLARATION").

EXCEPTING THEREFROM ANY PORTION THEREOF WHICH IS DESIGNATED AS A "LIMITED COMMON ELEMENT" IN THE DECLARATION OR ON THE ABOVE REFERENCED PLAT.

**PARCEL TWO (2): (UNIT)**

UNIT NOS. 100, 101, 102 AND 103 IN BUILDING 2 AS SHOWN ON THE ABOVE REFERENCED PLAT.

**PARCEL THREE (3): (COMMON ELEMENTS)**

AN EASEMENT FOR THE INSTALLATION, REPLACEMENT, REPAIR OR MAINTENANCE OF UTILITY LINES AND SYSTEMS, INCLUDING, BUT NOT LIMITED TO, NATURAL GAS, WATER, SEWER TELEPHONE, ELECTRICITY AND CABLE TELEVISION OR OTHER COMMUNICATION LINES AND SYSTEMS FOR THOSE PORTIONS DESIGNATED AS "COMMON AREA", AND "COMMON ELEMENTS", AS DEFINED IN AND SUBJECT TO THE DECLARATION, WHICH ARE APPURTENANT TO PARCELS I AND II DESCRIBED ABOVE.

PARCEL FOUR (4): (APPURTENANT EASEMENTS)

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND ACROSS THE COMMON AREAS AND COMMON ELEMENTS OF FLAMINGO POINTE CORPORATE CENTRE, AS MORE PARTICULARLY DESCRIBED IN AND SUBJECT TO THE DECLARATION, WHICH EASEMENT IS APPURTENANT TO THE UNITS DESCRIBED IN PARCEL 2.

PARCEL FIVE (5): (LIMITED COMMON ELEMENTS AND PARKING SPACES)

THE EXCLUSIVE RIGHT OF USE AND POSSESSION OF THOSE PORTIONS OF THE ABOVE REFERENCED PLAT WHICH ARE DESIGNATED AS A LIMITED COMMON ELEMENT IN THE DECLARATION; TOGETHER WITH THE EXCLUSIVE RIGHT OF USE AND POSSESSION OF PARKING SPACE LIMITED COMMON ELEMENT NO. 7 AS TO UNIT 100 AND NO. 8 AS TO UNIT 101 AND NO. 9 AS TO UNIT 102 AND NO. 10 AS TO UNIT 103 AS SET FORTH ON THE ABOVE REFERENCED PLAT; AND LIMITED COMMON ELEMENTS ARE APPURTENANT TO THE UNITS DESCRIBED IN PARCEL 2 HEREIN, AS PROVIDED FOR IN AND SUBJECT TO THE DECLARATION.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s) ☐

- a) 163-18-819-016  
b) 163-18-819-035  
c) 163-18-819-017  
d) \_\_\_\_\_

2. Type of Property:

- a) ☐ Vacant Land      b) ☐ Single Fam. Res.  
c) ☐ Condo/Twnhse      d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg.      f) ☒ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
i) ☐ Other \_\_\_\_\_

**FOR RECORDER'S OPTIONAL USE ONLY**

Document/Instrument # \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. Total Value/Sales Price of Property: \_\_\_\_\_

\$825,000.00

Deed in Lieu of Foreclosure Only (value of property): \_\_\_\_\_

(0.00)

Transfer Tax Value: \_\_\_\_\_

\$825,000.00

Real Property Transfer Tax Due: \_\_\_\_\_

\$4,207.50

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_%

The undersigned Seller/(Grantor)/Buyer (Grantee), declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

**Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature: \_\_\_\_\_

Capacity Grantor

Signature: \_\_\_\_\_

Capacity Grantee

**SELLER (GRANTOR) INFORMATION**

**BUYER (GRANTEE) INFORMATION**

**(REQUIRED)**

**(REQUIRED)**

Print Name Profondo, LLC, a Nevada limited liability company

Print Name: MCLV Holdings, LLC, a Nevada limited liability company

Address: 100297 Sunset Gardens

Address: 9512 W. Flamingo #102

City, St., Zip: Las Vegas, NV 89135

City, St., Zip: Las Vegas, NV 89147

**COMPANY REQUESTING RECORDING**

Print Name: Fidelity National Title Agency of Nevada, Inc.

Escrow #: 00056541-118

Address: 2450 St. Rose Parkway, Suite 150

City/State/Zip: Henderson, NV 89074

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

DEFENDANT\_000017

# **EXHIBIT “11”**

**Debi Pike’s Deposition  
rough draft transcript**

# **EXHIBIT “11”**

**Debi Pike’s Deposition  
rough draft transcript**

1

## DISCLAIMER

IN RE: JAMES VS. ALESSI

DEPOSITION OF: DEBI PIKE

I, MARK J. BOURASSA, ESQ. HEREBY ACKNOWLEDGE

THAT THE STENOGRAPHIC NOTES TAKEN IN THIS PROCEEDING ARE

BEING TRANSLATED INSTANTANEOUSLY INTO THEIR ENGLISH

EQUIVALENT THROUGH AN AUTOMATED PROCESS CALLED REALTIME

TRANSLATION;

THAT AT THE END OF THE PROCEEDINGS, I RECEIVED

THE ROUGH DRAFT TRANSCRIPT FROM THE COURT REPORTER;

THAT THIS REALTIME TRANSLATION IS A ROUGH DRAFT

AND IS NEITHER CERTIFIED, EDITED, NOR PROOFREAD BY THE

COURT REPORTER;

THAT THIS UNCERTIFIED, UNEDITED ROUGH REALTIME

DRAFT MAY CONTAIN UNTRANSLATED STENOGRAPHIC SYMBOLS, AN

OCCASIONAL REPORTER'S NOTE, A MISSPELLED PROPER NAME,

AND/OR NONSENSICAL WORD COMBINATIONS, DEPENDING UPON THE

COMPLEXITY OF THE DEPOSITION AND THE SPEED OF THE

## QUESTIONS AND ANSWERS;

THAT ALL SUCH ENTRIES WILL BE CORRECTED ON THE

FINAL CERTIFIED TRANSCRIPT, WHICH WILL BE DELIVERED TO ME

IN ACCORDANCE WITH STANDARD DELIVERY TERMS OR ON AN

EXPEDITED BASIS SHOULD I DESIRE FASTER DELIVERY;

THAT DUE TO THE NEED TO CORRECT ENTRIES PRIOR TO



25 CERTIFICATION, THIS ROUGH REALTIME DRAFT CAN ONLY BE USED

↑

2

1 FOR THE PURPOSE OF AUGMENTING COUNSEL'S NOTES AND CANNOT  
2 BE USED OR CITED IN ANY COURT PROCEEDING OR DISTRIBUTED  
3 TO ANY OTHER PARTIES.

4 I ALSO HEREBY ACKNOWLEDGE THAT I WILL BE BILLED  
5 AN ADDITIONAL PRICE PER PAGE FOR THE REALTIME ROUGH DRAFT  
6 TRANSCRIPT; AND, FURTHERMORE, THAT THIS CONSTITUTES MY  
7 ORDER FOR A CERTIFIED COPY OF THE TRANSCRIPT.

8

9 \* \* \* \* \*

10 LAS VEGAS, NEVADA

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

↑

3

1 Q. Good morning.

2 A. Good morning.

3 Q. Could you please state and spell your name for  
4 the record?

5 A. Debi Pike, D-e-b, as in boy, i, Pike, P-i-k-e.

6 Q. Works for me.

7 A. I never went by Alessi, so --

8 Q. Good morning Miss Pike, my name is Mark  
9 Bourassa. I I represent a woman named Melinda James.  
10 Otherwise known as what the heck is her other name.  
11 Melinda Ellis.

12 MR. GILMORE: Ellis.

13 Q. It's too early in the morning. Don't have the  
14 coffee

15 A. I know that you knew that.

16 Q. Exactly. I appreciate you appearing here  
17 today. Do you have an understanding in what capacity  
18 you're appearing?

19 A. Yes.

20 Q. What is that?

21 A. To speak about the position as a managing  
22 partner.

23 Q. Of?

24 A. Of --

25 Q. Profondo.

↑

4

1 A. Profondo

2 Q. P-r-o-f-o-n-d-o. Is that right?

3 A. Yes.

4 Q. I'm handing you a document. Have you seen that  
5 document before?

6 A. Yes.

7 Q. Have you seen that before?

8 A. Yeah.

9 Q. That's the deposition notice or the subpoena  
10 notice?

11 A. Yes.

12 Q. For your appearance here today? You've had an  
13 opportunity to review it?

14 A. I did, yeah.

15 MR. BOURASSA: We'll mark that as the first  
16 exhibit.

17 (Exhibit 1 was marked for identification.)

18 Q. So before we get started with the detail of the  
19 Profondo entity, I'd like to know a very little bit about  
20 you. You live in Las Vegas?

21 A. I do.

22 Q. What's your address here

23 A. 10927 sunset gardens drive.

24 Q. How long have you lived in Las Vegas?

25 A. Since '04. Yeah. Former school teacher, moved

↑

5

1 from California in '04.

2 Q. So your highest level of education would be what?

3 A. Teaching credential. So 4 years of bachelor's

4 in liberal arts and a teaching credential.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. What do you do?

8 A. I run Nevada community management.

9 Q. What does that entity do?

10 A. We manage, service HOAs. Yeah, so we have about

11 120 HOAs that we -- we're a full service management

12 company so we do the accounting, common area violations.

13 You name it, we do it.

14 Q. So an HOA management company?

15 A. Yes.

16 Q. Just make sure we're on the same page.

17 A. Yeah, HOA management company.

18 Q. I used to do a lot of construction defect --

19 A. Oh, okay.

20 Q. -- litigation the plaintiff's side so I've had

21 my fill --

22 A. Here in Vegas.

23 Q. Yes.

24 A. Yeah, okay. I came right at the scandalous time

25 Q. Yeah, all those night board meetings.

↑

6

1 A. Yes, which I have three this week, so yeah.

2 Q. How long have you been with that entity?

3 A. Since well, MCM since 2013. Been in the

4 business since, 07, 6. I had another company before MCM.

5 Q. All right. Could you explain to me what

6 Profondo is?

7 A. It's just an account. It's an entity. It's

8 a -- what's the right word. I can't think of the word.

9 I know, but I can't think of the word. It's like an

10 account. I can't think of the word. I'm sorry.

11 Q. All right. It's okay. If you think about it --

12 A. It's like a trust account I think.

13 Q. We'll get there. All right.

14 So could you tell me what your involvement with

15 Profondo has ever been?

16 A. I was a managing partner on the agreement, and

17 that's, you know, my brother and I do business together

18 and it was one entity that I had an interest in.

19 Q. What kind of interest did you have in the

20 entity?

21 A. Like percentage?

22 Q. Yes.

23 A. 3 percent.

24 Q. 3?

25 A. Yes.

↑

7

1 Q. When did that start? How did you get involved?

2 A. I don't -- get involved in signing? Like when  
3 did I sign the agreement? Or when did I get involved  
4 in --

5 Q. When is the first time you were involved in  
6 anything with respect to Profondo?

7 A. Few years ago. I think '16, '15. I don't, I  
8 don't, I don't recall the exact year when I signed the --

9 Q. All right.

10 A. -- agreement.

11 Q. So were you involved in the initial formation of  
12 the entity?

13 A. Yeah. Yeah, I mean I'm the managing partner, so  
14 I mean it was discussed, and you know I wanted that  
15 control over, over a family asset.

16 Q. Maybe I should be clear. The ownership and  
17 interests and formation and all that can change over  
18 time.

19 A. Okay.

20 Q. So what I'm asking first is do you know what  
21 year the entity was formed?

22 A. I believe '16.

23 Q. And so you were involved in it at that point in  
24 time?

25 A. Yes. I mean I -- yeah, whenever I needed to,

↑

8

1 when we formed it, I signed it and that was it, and I can  
2 look back and find it.

3 Q. Do you have a recollection of what month?

4 A. No.

5 Q. Estimate?

6 A. No.

7 Q. Spring? Fall? Summer?

8 A. No. No recollection.

9 Q. And then you wouldn't have had any involvement  
10 with the entity before that time; is that correct?

11 A. I don't recall. I would have to refresh my  
12 memory on that.

13 Q. How would you refresh your memory?

14 A. I'd have to go back in my documents or, you  
15 know, I just know, I know I was managing partner and  
16 that's all I remember.

17 Q. Were you involved in forming an operating

18 agreement for this company?

19 A. I believe that was all part of it.

20 Q. Do you know when that happened?

21 A. I don't recall. Couldn't give you a date.

22 Q. Can you tell me whether or not that operating  
23 agreement was ever amended?

24 A. No.

25 Q. With respect to those items, an operating

↑

9

1 agreement or an amended operating agreement, or the  
2 articles of organization who took care of those things?

3 A. Can you be more specific on what you mean?

4 Q. Those are submitted to the secretary of state.

5 A. Yes.

6 Q. So who would voluntarily submitted those to the  
7 secretary of state?

8 A. We have staff that works on the administrative  
9 part of those things. So I'm sure one of the staff. I  
10 don't recall honestly. Could have been me, but I don't  
11 recall.

12 Q. Do you recall signing any documents on behalf of  
13 Profondo?

14 A. Yes.

15 Q. What have you signed on behalf of Profondo?

16 A. The -- I'd have to see them. I couldn't name



17 them. I'd have to be provided to see.

18 Q. Who owns the other 97 percent of Profondo?

19 A. David.

20 Q. And what was David's role with respect to

21 Profondo? I'm sorry. Strike that.

22 When you say David, who do you mean?

23 A. David Alessi.

24 Q. And he's your brother?

25 A. My twin brother.

↑

10

1 Q. So with respect to Mr. Alessi's role with

2 Profondo what did he do?

3 A. I don't, I don't know what you function that

4 would require. He's just the, you know, 97 percent

5 holder. I don't know all the languages for that. So we

6 do a lot of business together and, you know, I might not

7 have the right language exactly what he did day to day.

8 I can't speak to that.

9 Q. Sure. Have you had your deposition taken

10 before?

11 A. Yes.

12 Q. On how many occasion?

13 A. Like maybe three times.

14 Q. I'm going to refresh your recollection with

15 respect to the rules of a deposition.

16 A. Okay.

17 Q. So we're clear and we're on the same page.

18 A. Okay.

19 Q. First and foremost as you can see right here,  
20 there's a very nice court reporter sitting here, and  
21 she's going to be writing down everything that we say.

22 A. Yes.

23 Q. She's already told us the most important rule,  
24 which is don't speak over each other --

25 A. Right.

↑

11

1 Q. -- because she can't take down two people  
2 talking at the same time.

3 A. Right.

4 MR. GILMORE: Those yeses and nos --

5 THE WITNESS: Right.

6 MR. GILMORE: -- are probably doing that.

7 THE WITNESS: Yes. Yes.

8 MR. GILMORE: So don't --

9 THE WITNESS: Gotcha.

10 MR. GILMORE: -- you know, chime in with those  
11 because she has to record those, and it's going to be a  
12 really messy transcript.

13 MR. BOURASSA: We'll get there.

14 MR. GILMORE: I agree with Mr. Bourassa on that.

15 Q. So that being said, you did take an oath, and  
16 that oath is the same oath you would take in a court of  
17 law if we had a judge sitting here and a jury over there  
18 and everything else just like on television. Do you  
19 understand that?

20 A. Yes.

21 Q. Do you understand that oath that you took has  
22 the same penalties of perjury as if we were in a court of  
23 law?

24 A. Yes.

25 Q. So in the discussion here I'm going to ask you

↑

12

1 questions, and I'm going to expect you to answer them  
2 truthfully and accurately. Do you understand that?

3 A. Yes.

4 Q. If on occasion, and this has happened in the  
5 past, my question doesn't make sense, or is confusing to  
6 you, please just ask me to clarify it and I'd be happy to  
7 do that. Okay?

8 A. Yes.

9 Q. And with respect to your response, if I ask you  
10 a question and you're able to answer it, I'm going to  
11 assume that you knew what I was asking and that your  
12 answer is accurate; is that fair?

13 A. Yes.

14 Q. You're doing a great job. One of the other  
15 important things which is to answer questions audibly,  
16 that is yeses and nos and verbal explanations. Body  
17 language like shaking your head yes or no, or less than  
18 understandable verbal responses like uh-huh or huh-uh  
19 don't type very well in a transcript, and so it's  
20 important that you answer audibly and clearly. Okay?

21 A. Yes.

22 Q. You're doing a great job with that so far.

23 With respect to your testimony, I'm entitled to your  
24 best testimony that you can give today. So I understand  
25 that some of the things year talking about may have

↑

13

1 happened a few years ago, but I'm entitled to your best  
2 recollection, your best testimony. If you don't know,  
3 it's okay, you can say you don't know. If you don't  
4 remember, it's okay, you can say you don't remember as  
5 long as those are truthful and accurate statements.

6 But if you have a vague recollection or a vivid  
7 recollection of an event, I'm entitled to that  
8 testimony.

9 A. Yes.

10 Q. Do you understand that?

11 A. Yes.

12 Q. The reason that you're here today is because you

13 are a very minority listed member of Profondo LLC Nevada  
14 limited liability corporation. Excuse me. Company.

15 A. Yes.

16 Q. Got to get my terms right too.

17 So did you review any documents in preparation for  
18 your deposition?

19 A. I reviewed them, but I just scanned over them  
20 briefly.

21 Q. What documents did you look at?

22 A. That one. The one that you showed me earlier.

23 Q. The deposition?

24 A. Exhibit 1.

25 Q. Deposition notice?

↑

14

1 A. Deposition notice, yes.

2 Q. Okay.

3 A. And there was an operating agreement. There was  
4 a few documents that Frank emailed me.

5 Q. That who emailed?

6 A. That I received.

7 Q. Who sent those to you?

8 A. Frank.

9 Q. Frank. Is that the gentleman sitting --

10 A. Yes.

11 Q. -- next to you? Does he represent you as your

12 attorney?

13 A. Yes. Or no.

14 MR. GILMORE: That would be news to me.

15 THE WITNESS: No, he doesn't. I'm sorry. He  
16 doesn't. Sorry. My mistake.

17 Q. (By Mr. Bourassa) So he's not your attorney?

18 A. No.

19 Q. You haven't retained him.

20 A. No, no, no.

21 Q. You're not paying him --

22 A. No.

23 Q. -- to be here today?

24 A. No, no, no.

25 Q. What other documents did you review?

↑

15

1 A. That's -- I can't, that's it. I just saw the  
2 documents. Just saw the operating -- I just clicked on  
3 the documents briefly, so I can't say that I am well  
4 versed with them.

5 Q. I understand. I'm just trying to clarify what  
6 the scope of what you --

7 A. Yes. I'm just, yeah --

8 Q. So with respect to what was provided to you,  
9 you, said the deposition notice and the operating  
10 agreement?

11 A. Yes.

12 Q. Was that the operating agreement or the amended  
13 operating agreement?

14 A. I can't -- I wouldn't -- I don't know.

15 Q. With respect to any other documents, can you  
16 tell me what else you looked at?

17 A. No.

18 Q. Is that you don't know or you're unable to  
19 recall?

20 A. I'm unable to recall.

21 Q. Who managed the financials of Profondo?

22 A. I don't -- I don't know.

23 Q. So you didn't write the checks?

24 A. Not that I recall.

25 Q. You didn't do the deposits?

↑

16

1 A. I can't say that I didn't or did. Yeah, could  
2 have. You mean write, like physically write out? I had  
3 the power to, but I didn't -- I don't recall how many I  
4 did or if I did any. Honestly don't.

5 Q. What was the business of Profondo?

6 A. I don't -- I don't remember.

7 Q. Do you know someone named Steve Luise?

8 A. Yes.

9 Q. Who is Steve Luise?

10 A. He's an attorney.

11 Q. How do you know him?

12 A. He owns HOLG Lawyers Group. He works in the  
13 same building that I work in.

14 Q. Does he have any relation to Profondo?

15 A. One of the documents I saw had his name on it.  
16 I don't remember what that was, that he testified to  
17 something or something. One of the documents I saw his  
18 signature.

19 Q. Is Mr. Luise your attorney?

20 A. No.

21 Q. Have you had any conversations with  
22 Mr. Luise at any point in time?

23 A. Yes.

24 Q. About what?

25 A. He's an HOA attorney, so I go to him for you

↑

17

1 know, my managing questions and things like that. He

2 owns a collection company. He's --

3 Q. All right. Have you had any conversations with  
4 Mr. Luise with respect to Profondo or this case with miss  
5 James?

6 A. No.

7 Q. Do you know who Ryan Kerbow is?

8 A. Yes.



9 Q. Who is Ryan Kerbow?

10 A. He was an attorney.

11 Q. And how do you know Mr. Kerbow?

12 A. He worked for Alessi and Koenig.

13 Q. Is he your attorney?

14 A. No.

15 Q. Have you ever had any conversations with  
16 Mr. Kerbow about this particular case or Profondo?

17 A. No. I mean I could have back then, but not  
18 recently.

19 Q. Back then meaning when?

20 A. When he was I believe working for Alessi back  
21 then, so -- but I don't remember.

22 Q. What date range are you talking about?

23 A. When the LLC was formed. I haven't had any  
24 communications with Ryan in a few years, so --

25 Q. Then back to David Alessi, what is your

↑

18

1 relationship with him with respect to Profondo?

2 A. Just a partner. We partner on several issues,  
3 on several entities, you know, family assets and things  
4 like that. It's not uncommon for me to sign and partner  
5 with him in different, you know, projects and things like  
6 that, so --

7 Q. With respect to those family businesses --

8 A. Uh-huh.

9 Q. -- what are you talking about? Profondo is one  
10 of those.

11 A. Right. Not uncommon for me to be a partner or  
12 signer.

13 Q. Who is in charge of the family businesses? Is  
14 that David?

15 MR. GILMORE: Object. Vague.

16 MR. BOURASSA: Sure.

17 MR. GILMORE: Use of the term in charge?

18 MR. BOURASSA: Okay.

19 Q. Do you understand what I mean?

20 A. Yes.

21 MR. GILMORE: Sorry.

22 MR. BOURASSA: One other thing. I'll object  
23 from time to time on behalf of my client. It doesn't  
24 mean you don't answer the question. It just means we're  
25 doing lawyer things on the record.

↑

19

1 THE WITNESS: Got it.

2 MR. GILMORE: He can correct me if he thinks I  
3 misstated that, but that's kind of how I believe it's --

4 THE WITNESS: Can you clarify?

5 Q. (By Mr. Bourassa) Sure. Who makes the decisions  
6 with respect to what the family businesses do?

7 A. We both do if I'm on it.

8 Q. So with respect to Profondo as an example, did  
9 you invest in that entity?

10 A. What do you mean by invest?

11 Q. Did you contribute any money to that entity at  
12 any point in time?

13 A. I don't recall.

14 Q. Did Mr. David Alessi contribute any money to  
15 that entity at any point in time?

16 A. I can't speak for him.

17 Q. So you don't know?

18 A. No, I don't know.

19 Q. With respect to the Profondo entity, are you  
20 aware that it has been revoked by the Nevada secretary of  
21 state?

22 A. I don't know to be honest. I think I might have  
23 heard that.

24 Q. Do you know what it means to be revoked by  
25 the --

↑

20

1 A. Yes.

2 Q. -- Nevada secretary of state? What does that  
3 mean?

4 A. That -- well, in my business it means if you  
5 don't do a filing in time, it's revoked.

6 Q. Is Profondo LLC still in business?

7 A. I don't think so. I'm not sure. I mean I'm not  
8 sure with respect to --

9 Q. Does Profondo LLC have any current assets?

10 A. I don't know. I haven't revisited any of this.  
11 This is, like for a long time.

12 Q. With respect to any period of time, are you  
13 aware of any assets that Profondo LLC has ever owned?

14 A. Any assets.

15 Q. She's going to ask you to speak up?

16 A. I know. I'm thinking. I'm not 100 percent sure  
17 to answer that, so I don't want to guess.

18 Q. Do you have in an estimate?

19 A. No.

20 Q. Do you have any area that maybe it was in  
21 marijuana cultivation or brewing or it was in some other  
22 area of business? You don't know?

23 A. No. No.

24 Q. As you sit here today, you don't know what  
25 Profondo LLC --

↑

21

1 A. I just thought, yeah, managing partner and  
2 that's all I can bring today, yeah.

3 Q. Okay.

4 A. I don't know all the specifics, so --

5 Q. Has David Alessi ever spoken to you regarding a  
6 lawsuit by Melinda James also known as Melinda Ellis?

7 A. I knew about it back then when it first came  
8 out, came to be.

9 Q. What was the subject of conversation? What was  
10 discussed?

11 A. Just very in a nutshell, I don't know too much  
12 about it. Just that it was a case up in Reno that he was  
13 going through. I really don't know the specifics.

14 Q. Do you know anything about what happened with  
15 that case?

16 A. Not specifically.

17 Q. Generally speaking?

18 A. That was so far ago. I'm trying to be very  
19 literal, but I don't -- I mean I just -- not  
20 specifically, but I just know that there was -- I think  
21 the woman was like 92. Is that the one? No, I don't  
22 know. I really wouldn't be able to explain it in detail,  
23 but --

24 Q. What did you do to prepare for today's  
25 deposition?

↑

22

1 A. Not -- just reading that. Not much.

2 Q. Who have you spoken to about the deposition  
3 today? Excuse me. Let me rephrase that.

4 To whom have you spoken about this deposition?

5 A. Well, my staff. I tell people I have a  
6 deposition today, but I haven't spoken to anybody about  
7 it as far as --

8 Q. Did you have any conversations with Mr. Gilmore  
9 or anyone from his office?

10 A. To confirm the appointment, yes.

11 Q. What about the -- I'm sorry. Go ahead. I cut  
12 you off. It's my bad.

13 A. Yeah. No. We just talked about like the dos  
14 and don'ts of the deposition, and he sent me some  
15 documents.

16 Q. Have you spoken to Mr. Luise or Mr. Kerbow about  
17 this deposition?

18 A. No.

19 Q. Have you spoken to David Alessi --

20 A. No.

21 Q. -- about this deposition? Have you done  
22 anything else or spoken to anyone else to prepare for  
23 this deposition today?

24 A. No.

25 Q. Did Mr. Alessi ever approach you with respect to

↑

23

1 a judgment in the Melinda Ellis, Melinda James case  
2 against Alessi?

3 A. Can you say that again?

4 Q. Did Mr. Alessi ever speak to you about a  
5 judgment in the Melinda Ellis versus Alessi Koenig case?

6 A. Yes.

7 Q. What was that conversation?

8 A. It wasn't a specific. It was just I know about  
9 it. I don't -- yeah, it's been several years, so it's,  
10 you know, I wasn't sure if it was over, not over, and  
11 then I got this.

12 Q. So it's fair to say you don't know any specifics  
13 about the judgment. Is that accurate?

14 A. No, just that there was one.

15 Q. Do you know anything about the appeal of that  
16 judgment?

17 A. Not -- no, I don't. We haven't really -- I mean  
18 I've been -- yeah, no. And if I did, I don't remember.  
19 I mean there's been a lot -- yeah.

20 Q. With respect to the documentation for Profondo,  
21 are there any corporate records?

22 A. I'm sure there might be. I don't know.

23 Q. Who would have those if they existed?

24 A. I don't know.

25 Q. Did you as a member of the entity engage in any

↑

24

1 meetings with respect to the operations of the company?

2 A. I don't recall.

3 Q. Are there bank records with respect to the  
4 company?

5 A. I don't recall. I'm a managing partner, signer,  
6 you know. I know I had some power there as far as if we  
7 needed to, but all these specifics I don't recall, so I  
8 just --

9 Q. What have you ever signed on behalf of in terms  
10 of the power that you have on behalf of Profondo?

11 A. They're in my email. I'd be able to look, but I  
12 couldn't list them off. The agreement I mean with  
13 Profondo.

14 Q. By that you mean the operating agreement?

15 A. Yes, the one I have the 3 percent interest in.  
16 I'm sorry. I didn't have time to prepare. This was all  
17 very fast, so I --

18 Q. Are you not ready to go forward and give your  
19 best testimony today?

20 A. I signed what you saw, what you know that I  
21 signed, the operating agreement. So that's, you know,  
22 why I'm here. I'm to verify that.

23 Q. Have you ever -- I'm sorry.

24 A. Go ahead. I'm sorry. My bad. Go ahead.

25 Q. Have you ever received any proceeds from



1 Profondo LLC?

2 A. I don't recall.

3 Q. What's the nature of your other business  
4 interests that you share with David Alessi?

5 A. Can you be more specific?

6 Q. Sure. What other companies or deals are you  
7 involved in with David Alessi?

8 A. I can't recall at the moment.

9 Q. What's Montego Bay trust?

10 A. A trust. I'm not familiar. I mean I know the  
11 name, but --

12 Q. Do you have an understanding of your role with  
13 respect to that entity?

14 A. Not specifically right now, no.

15 Q. Is Mr. Alessi involved in that entity?

16 A. I don't know.

17 Q. Does Mr. Alessi have the ability to bind the  
18 Montego Bay trust?

19 A. This is -- I don't know.

20 Q. Does Mr. Alessi have the ability to bind  
21 Profondo LLC?

22 A. I don't know.

23 Q. With respect to the Nevada secretary of state  
24 documents, do you recall submitting any of the annual  
25 list of managers to the secretary of state of Nevada for

↑

26

1 Profondo?

2 A. I don't recall.

3 Q. Do you know who prepared the annual list of

4 managers for the Nevada secretary state --

5 A. No.

6 Q. -- for the Profondo entity?

7 A. No.

8 Q. Is there a reason why in May 15, 2015, the

9 signature of the, on the annual list for Profondo LLC was  
10 David Alessi? Is there a reason why he would be on  
11 there.

12 A. For Profondo?

13 Q. For Profondo.

14 A. Because he's 97 percent.

15 Q. And he's titled as owner. Would that be an  
16 accurate description --

17 A. Part.

18 Q. -- of his role?

19 A. Part, yeah.

20 MR. BOURASSA: I don't have any questions for  
21 you beyond that.

22 THE WITNESS: Okay.

23 MR. GILMORE: I do.

24 Q. If I said to you to describe what you think this

25 term means -- I'll give you the term, and then I'll ask

↑

27

1 you to describe it for me, David Alessi has authority to

2 bind the ABC trust, what does bind mean?

3 MR. BOURASSA: Object.

4 MR. GILMORE: What's your understanding of what

5 bind means under that context?

6 MR. BOURASSA: Object to form, but you can

7 answer.

8 THE WITNESS: Binding, it's binded. Like it's a

9 sure thing, like binding. It's legitimate. It holds.

10 Q. (By Mr. Gilmore) Okay. Do you know the

11 difference between a limited liability company and a

12 corporation?

13 A. No. Not that I'd be able to define.

14 MR. GILMORE: I have no further questions.

15 THE WITNESS: Okay.

16 MR. BOURASSA: That's all. Thank you.

17

18

19

20

21

22

23

24

25



# **EXHIBIT “12”**

## **Defendant David Alessi’s Deposition**

# **EXHIBIT “12”**

## **Defendant David Alessi’s Deposition**



DAVID ALESSI  
JAMES vs ALESSI

December 12, 2019

2

1 APPEARANCES:

2 For the Plaintiff, Melinda James:

3 MARK J. BOURASSA, ESQ.  
4 The Bourassa Law Group  
5 2350 West Charleston Boulevard  
6 Suite 100  
7 Las Vegas, Nevada 89102  
8 (702) 851-2180

9 For the Defendant, David Alessi:

10 FRANK GILMORE, ESQ.  
11 Robinson Sharp Sullivan & Brust  
12 71 Washington Street  
13 Reno, Nevada 89503  
14 (775) 329-3151

15 --o0o--  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X

WITNESS	PAGE
DAVID ALESSI	
Examination by Mr. Bourassa	4

--o0o--

## E X H I B I T S

PLAINTIFF'S	PAGE
Exhibit 1 - Notice of Taking the Deposition of Alessi & Koenig	5
Exhibit 2 - Subpoena of the Person Most Knowledgeable for Alessi & Koenig, LLC	5
Exhibit 3 - Notice of Taking the Deposition of David Anthony Alessi	5
Exhibit 4 - Stipulation Regarding Judgment Enforcement	37
Exhibit 5 - First Amended Complaint for Breach of Contract and Fraud	50
Exhibit 6 - Defendant David Anthony Alessi's Answer to Plaintiff's First Amended Complaint	50

--o0o--



1 LAS VEGAS, NEVADA;

2 Thursday, December 12, 2019; 1:10 P.M.

3  
4 DAVID ALESSI,

5 having been first duly sworn, testified as follows:

6  
7 EXAMINATION

8 BY MR. BOURASSA:

9 Q. Good afternoon. My name is Mark  
10 Bourassa. I'm the attorney for Melinda James in  
11 this matter.

12 Would you please state and spell your  
13 name for the record.

14 A. David Alessi, A-l-e-s-s-i.

15 Q. Good afternoon, Mr. Alessi. I guess we  
16 don't care. I'm going to hand you three documents.  
17 Do you recognize those?

18 A. Yes.

19 Q. And so you understand that those are the  
20 notices for the appearance of, first, a  
21 representative of Alessi & Koenig, the law firm.

22 Second, the person most knowledgeable of  
23 Alessi.

24 And third, you personally for appearing  
25 here today for a deposition; is that right?

1 could extend to you.

2 Q. With respect to the second affirmative  
3 defense, the answer states, "Plaintiff failed to  
4 mitigate her damages."

5 What factual basis or what facts can you  
6 offer that would support your affirmative defense  
7 that plaintiff failed to mitigate her damages?

8 MR. GILMORE: Same objection.

9 THE WITNESS: Plaintiff could have  
10 accepted the offer of all the files of the company.  
11 You had a judgment against the company, the company  
12 was offered to you in exchange for that judgment,  
13 and the plaintiff could have mitigated her damages  
14 by accepting that offer.

15 BY MR. BOURASSA:

16 Q. And I would have had 500 depositions to  
17 attend or a thousand or 2000 or however many it is  
18 now, right?

19 Anything else to support the mitigation  
20 of damages defense?

21 A. That's the only thing I can think of off  
22 the top of my head.

23 Q. Third affirmative defense says,  
24 "Plaintiff's claims alleged in the complaint are  
25 barred by the statute of limitations."

1                   What facts can you offer that support  
2                   that her allegations are barred by the statute?

3           A.       I would just defer to the statute of  
4                   limitations and whatever the rules are there.

5           Q.       What statute of limitations are you  
6                   applying?

7                   MR. GILMORE:   Calls for a legal  
8                   conclusion.

9                   THE WITNESS:   Yeah.   I'm not a Nevada  
10                  attorney, I wouldn't feel comfortable answering  
11                  those questions.

12          BY MR. BOURASSA:

13          Q.       So do you have any facts to support your  
14                   third affirmative defense?

15          A.       I don't.

16          Q.       With respect to the fourth affirmative  
17                   defense it states, "To the extent defendant's  
18                   actions violated the law, such actions were the  
19                   result of a bona fide error notwithstanding  
20                   reasonable procedures designed to avoid such error."

21                   What is the bona fide error -- I'm sorry.

22                   What facts can you offer to support that  
23                   there was a bona fide error with respect to this  
24                   claim?

25          A.       My knowledge that I personally operated

1 in good faith with you and your client throughout  
2 this process. It was not purposely done in bad  
3 faith to try to hurt you or your client.

4 Q. What reasonable procedures were in place  
5 to prevent such a mistake?

6 A. I wasn't, as I testified earlier, a part  
7 of these negotiations as much as you might think I  
8 was. So I'm not -- I'm not sure.

9 Q. Do you have any other facts to support  
10 the assertion of a bona fide error or procedures  
11 designed to support the error?

12 A. No.

13 Q. With respect to your fifth affirmative  
14 defense, your answer states, "Plaintiff's claims may  
15 be precluded, in whole or in part, to the extent  
16 plaintiff's purported damages, if any, were caused  
17 by plaintiff's acts or omissions."

18 Do you have any basis to believe that  
19 Ms. Ellis or Ms. James, depending which complaint  
20 we're dealing with, took any acts or omissions that  
21 have caused her own damages with respect to this  
22 case?

23 A. Well, she could have paid her assessments  
24 on time.

25 Q. That's prejudgment. With respect to her

1 damages postjudgment in attempting to collect in the  
2 subject matter of the current action, do you have  
3 any facts to support that she had any acts or  
4 omissions that would excuse your liability?

5 A. Again, as a non-Nevada attorney, I don't  
6 feel comfortable opining on these affirmative  
7 defenses as they relate to Nevada law. I would just  
8 defer to my counsel.

9 Q. I'm not asking you to opine on them, I'm  
10 asking you for factual or evidentiary support for  
11 them.

12 A. Again, I would defer to my Nevada  
13 counsel.

14 Q. So with respect to the fifth affirmative  
15 defense, you have no further facts to offer?

16 A. Correct.

17 Q. With respect to the sixth affirmative  
18 defense, "Plaintiff's claims may be precluded, in  
19 whole or part, to the extent plaintiff's purported  
20 damages, if any, were caused by third parties over  
21 whom the defendant has no control or authority."

22 A. I have nothing to add to that.

23 Q. With respect to the seventh affirmative  
24 defense, "Plaintiff lacks Article III standing to  
25 pursue the allegations in the complaint."

1           A.       Again, I would defer to my Nevada  
2 counsel.

3           Q.       So you have no facts to offer with  
4 respect to that affirmative defense?

5           A.       I don't.

6           Q.       With respect to the eighth affirmative  
7 defense, "Plaintiff's and/or claims" -- that's a  
8 little difficult.

9                    "Plaintiff's and/or claims are barred by  
10 release, contract provision, waiver, unclean hands,  
11 laches, estoppel and/or res judicata."

12                   Do you have any facts to support that  
13 affirmative defense?

14           A.       I would again defer to my Nevada counsel.

15           Q.       And beyond that, you have nothing -- no  
16 facts or evidence to offer; is that right?

17           A.       Right.

18           Q.       And ninth affirmative defense,  
19 "Plaintiff's contract claim fails for lack of  
20 consideration and failure of consideration."

21                   Do you have any facts to offer with  
22 respect to the ninth affirmative defense?

23           A.       I would again just defer to my Nevada  
24 counsel.

25           Q.       And you have no other facts to offer

1 beyond that?

2 A. Correct.

3 MR. BOURASSA: Take a break. I'm almost  
4 done.

5 (A recess was taken.)

6 BY MR. BOURASSA:

7 Q. One of the -- couple of things from your  
8 March 18, 2016 affidavit that I had some questions  
9 about.

10 Paragraph 10 you say, "When the title  
11 company that was hired to prepare the security  
12 instrument asked for written confirmation that  
13 Profondo agreed with respect to all of this."

14 What title company was that?

15 A. I don't recall.

16 Q. Who would, anyone?

17 A. No.

18 Q. Okay. And then it's your testimony that  
19 Ms. Pike refused to encumber Profondo; is that  
20 right?

21 A. That's my recollection, yes.

22 Q. Excuse me. Encumber the property.

23 A. Well, that and we didn't have a finalized  
24 agreement with you or your client. But both of  
25 those things.

DAVID ALESSI  
JAMES vs ALESSI

December 12, 2019

83

## REPORTER'S DECLARATION

STATE OF NEVADA            )  
  ) ss  
COUNTY OF CLARK         )

I, Jualitta Stewart, a duly commissioned  
Notary Public, Clark County, State of Nevada, do  
hereby certify:

I reported the taking of the deposition  
of the witness, DAVID ALESSI, commencing on  
Thursday, December 12, 2019, at the hour of  
1:10 p.m.

That prior to being examined, the witness  
was by me duly sworn to testify to the truth, the  
whole truth, and nothing but the truth.

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
transcript is a complete, true, and accurate  
transcription of said shorthand notes.

I certify that I am not a relative or  
employee of any party involved in said action, nor a  
person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my official seal in my office in  
the County of Clark, State of Nevada, this 26th day  
of December, 2019



JUALITTA STEWART, RPR, CCR No. 807



# **EXHIBIT “13”**

**Order From Prior Action  
Dated September 2018**

# **EXHIBIT “13”**

**Order From Prior Action  
Dated September 2018**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MELINDA ELLIS,

Plaintiff,

v.

ALESSI TRUSTEE CORPORATION;  
DAVID ANTHONY ALESSI; and ALESSI  
& KOENIG LLC,

Defendants.

Case No. 3:09-cv-00428-LRH-WGC

ORDER

This is an order in response to plaintiff Melinda Ellis's ("Ellis") February 26, 2016 motion for an order to show cause related to defendant Alessi & Koenig, LLC's ("A&K") failure to abide by a stipulated stay of judgment. ECF No. 236.

**I. Facts and Procedural History**

This action has an extensive litigation history. In brief, Ellis purchased real property within the Arrowcreek subdivision in Washoe County, Nevada. Arrowcreek is governed by a homeowner's association ("HOA") which charges dues to all residents that live within the subdivision. Ellis became delinquent and defaulted on her HOA dues. Defendants Alessi Trustee Corporation ("ATC")<sup>1</sup> and A&K,<sup>2</sup> acting as the various participants in collecting delinquent HOA dues on behalf of the HOA, sent multiple letters to Ellis regarding the debt.

<sup>1</sup> Defendant ATC is a company located in Las Vegas, Nevada, and primarily operates as an adjustment and collection services business which works with Homeowner's Associations to collect on delinquent HOA dues.

<sup>2</sup> Defendant A&K is a law firm in the State of Nevada which acted as attorneys for the Homeowner's Associations when delinquency notices were sent out.

1 Ellis did not pay her back HOA dues. Eventually, a notice of default was recorded on her  
2 property along with a notice of trustee's sale.

3 On July 15, 2009, after the notice of trustee's sale, Ellis filed a complaint against  
4 defendants ATC, A&K, and David A. Alessi ("Alessi")<sup>3</sup> alleging three causes of action:  
5 (1) breach of fiduciary duty; (2) unfair debt collection practices in violation of  
6 15 U.S.C. § 1692; and (3) racketeering. ECF No. 1, Ex. 1. Individual defendant Alessi filed a  
7 motion to dismiss (ECF No. 8) which was granted by the court after a stipulation between the  
8 parties (ECF No. 52).

9 A jury trial was held on Ellis's claims against defendant ATC and A&K in early  
10 January 2015. Ultimately, at the close of trial, the jury returned a verdict in favor of Ellis and  
11 awarded her \$233,000.00 in damages against both ATC and A&K jointly. ECF No. 196. The  
12 court then granted Ellis's motion for attorney's fees and costs and awarded her approximately  
13 \$145,000 in fees and costs. ECF No. 215. Judgment against ATC and A&K was entered in the  
14 amount of \$381,091.04 plus post-judgment interest. ECF No. 218.

15 Following the jury verdict and judgment, the parties reached a stipulated agreement  
16 regarding a stay of the judgment. ECF No. 230. Under the parties' stipulation (1) Ellis would  
17 refrain from enforcing the judgment; (2) defendant A&K would execute a promissory note in  
18 the amount of \$383,990.07 in favor of Ellis; (3) defendant A&K would grant Ellis a first  
19 priority security interest in the form of a deed of trust against real property identified as 9512  
20 West Flamingo Road, Suite 100, Suite 101, and Suites 102-103; and (4) defendant A&K would  
21 make monthly payments to Ellis until the promissory note was repaid. *Id.* The parties'  
22 stipulation was approved by the court on December 16, 2015. ECF No. 235.

23 Since the stipulation, A&K has only made three payments to Ellis, has not granted a  
24 first priority security interest in the identified real property, and has indicated on multiple  
25 occasions to Ellis's counsel that it would not be granting any security interest as required under  
26 the stipulation. In response to A&K's continued conduct, Ellis filed a motion for an order to  
27 show cause in February 2016 (ECF No. 236), which was granted by the court (ECF No. 245).

28 \_\_\_\_\_  
<sup>3</sup> Individual defendant Alessi is the owner of ATC and the managing and founding partner of A&K.

1 In that order, A&K was ordered to show cause within fourteen (14) days as to why A&K was  
2 not complying with the parties' stipulation. *Id.* A&K did not respond to that order. Instead, on  
3 December 13, 2016, A&K filed for bankruptcy.

4 On August 22, 2017, Ellis filed a motion for a status check as no further action had been  
5 taken by either defendant ATC or A&K, and defendant A&K was still involved in bankruptcy  
6 proceedings. ECF No. 248. The court granted Ellis's motion and ordered defendants to respond  
7 within ten (10) days why they should not be held in contempt of court for violation of the  
8 court's orders. ECF No. 50. On September 25, 2017, dismissed defendant Alessi filed a  
9 response to the court's order (ECF No. 252) to which Ellis responded (ECF No. 255). Neither  
10 defendant ATC nor A&K filed any response to the court's order.

## 11 **II. Discussion**

12 The issue before the court is how to proceed on Ellis's motion for an order to show  
13 cause which was granted by the court. It is undisputed that ATC and A&K have not responded  
14 to any of the court's orders over the last two years, even those prior to A&K's initiation of  
15 bankruptcy proceedings. It is further undisputed that A&K did not comply with the terms of the  
16 stipulated stay of judgment. Based on the record before the court and the clear indication that  
17 there was either fraud on behalf of defendants in drafting the stipulated stay of judgment or a  
18 mutual mistake by the parties as to the most basic components of the stipulated stay, the court  
19 finds that the most appropriate course of action is to vacate the stipulated stay (ECF No. 235)  
20 and allow Ellis to proceed in enforcing the judgment against both ATC and A&K.

21 From the record before the court it appears that defendants, including dismissed  
22 defendant Alessi as the manager/managing partner of A&K and ATC, negotiated the stipulated  
23 stay negligently, at a minimum, if not fraudulently. It is clear that defendants failed to secure  
24 the consent of the property owner of the identified properties, Profondo, LLC ("Profondo"), a  
25 Nevada limited liability company, to use the properties as security for the promissory note as  
26 defendants had claimed when initially negotiating the stipulation. In fact, Alessi now concedes  
27 that the properties which were intended to be pledged as security were not actually owned by  
28 any of the defendants at the time of the stipulation.

1 It also appears to the court that the stipulated stay was negotiated and drafted in such a  
2 manner as to make it impossible for A&K to comply with the agreement. In his response,  
3 Alessi claims that A&K reasonably believed that Profondo would be willing to pledge the  
4 properties to secure the A&K note, but that ultimately A&K was informed after the stipulation  
5 that Debra Pike, the manager of Profondo, was unwilling to consent to the pledge and refused  
6 to transfer the properties through no fault of A&K or the other defendants. However, this  
7 concession is disingenuous as Alessi was the manager and registered agent of Profondo for  
8 many years during the relevant time period. Further, for the filing year March 2015 through  
9 March 2016, the relevant time period of the parties' stipulation, Alessi signed Profondo's  
10 Nevada Secretary of State filing as Owner. Further, it has come to the court's attention that  
11 Debra Pike may also be related to Alessi. Thus, it appears that Alessi himself at least had  
12 control of the properties and the ability to pledge them as security on behalf of A&K had  
13 the stay been negotiated in good faith. Instead, Alessi and defendants negotiated and drafted the  
14 stay for the sole purpose of frustrating Ellis's ability to collect on the judgment.

15 Moreover, the evidence in this action establishes that Ellis entered into the stipulated  
16 stay of her enforcement of the judgment with the expressed expectation that the first deed of  
17 trust on the identified properties could be recorded and that A&K, through Alessi, had full  
18 power to comply with the negotiated stay of judgment. Therefore, based on the above record  
19 and the other evidence and documents submitted to the court, the court finds good cause exists  
20 to vacate the stipulated stay approved by the court (ECF No. 235) and lift the stay of judgment  
21 entered in this case.

22 IT IS THEREFORE ORDERED that the approved stipulation to stay judgment (ECF  
23 No. 235) is VACATED in accordance with this order, and the stay of judgment is LIFTED.

24 IT IS SO ORDERED.

25 DATED this 7th day of September, 2018.

26   
27 LARRY R. HICKS  
28 UNITED STATES DISTRICT JUDGE